

7

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 309

FREDERICK J. HIGGS, AS ALIEN PROPERTY CUSTODIAN, AND FRANK WHITE, AS TREASURER OF THE UNITED STATES PRISONERS.

MERCANTILE TRUST COMPANY

ON WRIT OF HABEAS CORPUS TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

APPEAL FROM THE DISTRICT COURT OF THE DISTRICT OF COLUMBIA, 1925
APPEAL FROM THE DISTRICT COURT OF THE DISTRICT OF COLUMBIA, 1925

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 809

FREDERICK C. HICKS, AS ALIEN PROPERTY CUSTODIAN; AND FRANK WHITE, AS TREASURER OF THE UNITED STATES, PETITIONERS

VS.

MERCANTILE TRUST COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

INDEX

	Original	Print
Record from D. C. U. S., Eastern District of Missouri.....	1	1
Citation and service [omitted in printing].....	1	1
Caption [omitted in printing].....	2	1
Bill of complaint.....	2	1
Summons and marshal's return.....	7	3
Motion to dismiss.....	8	4
Answer.....	9	4
Exhibit A. List of vessels destroyed and claims paid by United States.....	21	12
Motion to strike portions of answer.....	44	29
Opinion, Faris, J., on order overruling motion to dismiss and sustaining motion to strike.....	48	32
Order overruling motion to dismiss and sustaining motion to strike.....	56	37
Amended answer.....	57	37
Statement of evidence.....	59	38
Testimony of R. A. Huber.....	59	38
Samuel A. Mitchell.....	61	39
Edgar L. Taylor.....	61	40
Charles Maull.....	63	40
R. A. Huber (recalled).....	64	41
Exhibit 1. Motion to dismiss and answer (copy) [omitted in printing].....	64	41
Exhibits A, B, C, and D. List of vessels destroyed and claims paid by United States (copy) [omitted in printing].....	78	41
Memorandum re plaintiffs' Exhibits 1-a, 1-b, 1-c, and 1-d.....	101	41
Plaintiffs' Exhibit 2. Stipulation re allegations in answer.....	101	42

Record from D. C. U. S., Eastern District of Missouri—Continued.

Statement of evidence—Continued.	Original.	Print.
Memorandum re plaintiffs' Exhibits 2-a, 2-b, 2-c, and 2-d	105	44
Plaintiffs' Exhibit 3. Brief of Thomas W. Miller et al. in opposition to motion to strike certain portions of answers filed in the cases of Lilly Busch et al. <i>vs.</i> Thomas W. Miller	105	44
Opinion of Supreme Court of the United States in the case of Banco Mexicano de Comercio e Industria et al. <i>vs.</i> Deutsche Bank, et al.	112	49
Plaintiffs' Exhibit 4. Certified copies of record entries of Treasury Department	121	54
Exhibits in evidence. Treasury notes of German Empire ..	125	58
Stipulation re notes	128	58
Testimony of Adna R. Johnson	128	58
Exhibit A. Letter from Thomas W. Miller to Secretary of the Treasury	130	59
Testimony of M. Carter Hall	133	61
Stipulation re statement of evidence	134	62
Judge's certificate to statement of evidence	135	62
Final decree	135	62
Petition for appeal	137	64
Assignments of error	138	64
Plaintiff's Exhibit 1. Motion to dismiss and answer (copy) [omitted in printing]	142	66
Exhibits A, B, C, and D. List of vessels destroyed and claims paid by United States (copy) [omitted in printing]	155	66
Plaintiff's Exhibit 2. Stipulation re allegations in answer (copy) [omitted in printing]	178	66
Plaintiff's Exhibit 3. Brief of Thomas W. Miller (copy) [omitted in printing]	182	66
Opinion of Supreme Court of United States in the case of Banco Mexicano de Comercio e Industria et al. <i>vs.</i> Deutsche Bank (copy) [omitted in printing]	189	67
Plaintiff's Exhibit 4. Certified copies of record entries of Treasury Department (copy) [omitted in printing]	197	67
Order allowing appeal	200	67
Præcipe for transcript of record	201	68
Memorandum re printing	202	68
Order extending time	202	68
Clerk's certificate	203	69
Proceedings in U. S. C. C. A., Eighth Circuit	204	69
Motion to substitute Frederick C. Hicks as A. P. C. in place of Thomas W. Miller, etc	204	71
Consent and request of appellant for substitution	206	71
Order substituting Frederick C. Hicks in place of Thomas W. Miller	207	72
Clerk's certificate	208	73
Order allowing certiorari	210	73

[Citation in usual form showing service on Fordyce, Holiday & White, filed June 19, 1924, omitted in printing.]

In United States District Court

[Caption omitted.]

Bill of complaint. Filed March 23, 1923

MERCANTILE TRUST COMPANY, A CORPORATION,
complainant

vs.

FRANK WHITE, TREASURER OF THE UNITED
States, and Thomas W. Miller, Alien Property
Custodian, defendants

No. 6335. Equity

*To the District Court of the United States for the Eastern Division
of the Eastern Judicial District of Missouri:*

Mercantile Trust Company, complainant herein, respectfully states
to this honorable court as follows:

1. That it is a corporation organized under the laws of
the State of Missouri, with its principal office and place of
business in the city of St. Louis in said State, and that it brings
this suit under the provisions of section 9 of an act of Congress,
approved October 6th, 1917, as amended, and commonly known as
"the trading with the enemy act."

2. That the defendants, Frank White and Thomas W. Miller are
citizens of the United States and are sued as Treasurer of the United
States and as Alien Property Custodian, respectively.

3. That the purpose of this suit is to establish a debt owing to
complainant by the Imperial German Government, and its successor
government, the Republic of Germany, and to obtain from this hon-
orable court on order directing the debt to be paid out of the money
or other property formerly belonging to said Imperial German
Government and now held by the defendants.

4. That the complainant is a person, not an enemy or an ally of
an enemy within the meaning of section 9 of the trading with the
enemy act approved October 6th, 1917, as amended.

5. That on October 6th, 1917, the date of the approval of said
trading with the enemy act, the Imperial German Government was
an enemy within the meaning of said act and continued to be an
enemy until it ceased to exist as a government.

6. That prior to October 6th, 1917, the Imperial German Govern-
ment owed to complainant the sum of one hundred thousand dollars
(\$100,000.00) evidenced by 6% treasury notes dated the 1st day
of April, 1916, payable on April 1st, 1917, known as Series 26,
that complainant purchased said notes for value long prior to
the declaration of war between the United States and Germany

and prior to October 6th, 1917, and that said notes aggregating one hundred thousand dollars (\$100,000.00) constitute a debt within the meaning of the provisions of section 9 of the trading with the enemy act, as amended; that on or about March 14th, 1917, the payment and maturity of these notes was extended to April 1st, 1918, and interest thereon paid in advance to said April 1st, 1918; that thereafter, and on the 24th day of May, 1920, the amount of thirty-two hundred thirty-three dollars and thirty-three cents (\$3,233.33) was paid to complainant out of funds released by the Alien Property Custodian and applied by complainant on account for past due interest.

7. That since said last stated date, no interest has been paid and the same has accrued and is accruing upon said indebtedness at the rate of six per centum (6%) per annum, and has become and is becoming a part of said indebtedness.

8. That the Alien Property Custodian now has in his possession or to his credit in the Treasury of the United States funds of the Imperial German Government seized by him under the provisions of said trading with the enemy act as amended, and which are available by law, sufficient to pay the entire indebtedness, both principal and interest owing to complainant.

9. That the present German Government has admitted the indebtedness claimed by Mercantile Trust Company, both principal and interest, said indebtedness being evidenced by said German Treasury notes of the Imperial German Government, and the present German Government has consented in writing to the payment of the principal and interest of said debt out of available funds now in the hands of the Alien Property Custodian, or to his credit in the Treasury of the United States.

10. That complainant has duly filed under oath, its notice of its said claim with the Alien Property Custodian and in such form and containing such particulars as were required by said custodian for the allowance and payment of its debt out of funds in the hands of the Alien Property Custodian or in the Treasury of the United States and available for such payment, and has duly made application to the President of the United States for the payment of said debt; that more than sixty (60) days have elapsed since the filing of said application, and there has been no order issued by the President of the United States directing the payment of said debt, or any part thereof, to complainant.

Wherefore, complainant presents this, its bill of complaint, and prays—

1. That the said Frank White, Treasurer of the United States, and the said Thomas W. Miller, Alien Property Custodian, may be made parties defendant to this bill, and required to answer the same, but not under oath—answer under oath being hereby expressly waived.

2. That the right of the complainant to recover said sum of one hundred thousand dollars (\$100,000.00) with interest at the rate of

six per centum (6%) per annum from the 1st day of April, 1918, less the amount of thirty-two hundred thirty-three dollars and thirty-three cents (\$3,233.33) received as above stated on May 24th, 1920, until the order of this honorable court may be established, determined, and adjudicated, and that the complainant may be awarded a decree against the said Frank White, Treasurer of the United States, and Thomas W. Miller, Alien Property Custodian, for the payment of said sum of one hundred thousand dollars (\$100,000.00) and the balance of the interest thereon as aforesaid.

3. That due process may be issued and that complainant may be granted such other, further, and general relief in the premises as the nature of its case may require, or to equity may seem meet, and complainant will ever pray.

MERCANTILE TRUST COMPANY,
By J. HUGH POWERS.
FORDYCE, HOLLIDAY & WHITE,
Its Solicitors.

[Duly sworn to by J. Hugh Powers; jurat omitted in printing.]

United States District Court

Summons and marshal's return. Filed May 7, 1924

The President of the United States of America, to Frank White, Treasurer of the United States, and Thomas W. Miller, Alien Property Custodian, greeting:

You are hereby commanded to be and appear at and before the District Court of the United States, in and for the Eastern Division of the Eastern Judicial District of Missouri, on April 12th next, at the city of St. Louis, Missouri, then and there to answer the bill of complaint of Mercantile Trust Company, a corporation citizen of the State of Missouri, filed against you on the 23rd day of March, 1923: Hereof fail not.

Witness, the honorable C. B. Faris, judge of the District Courts of the United States within and for the Eastern District of Missouri, the 23d day of March, 1923.

Issued at office, in the city of St. Louis, Missouri, under the seal of said District Court, the day and year last aforesaid.

[SEAL.]

(Signed)

JAS. J. O'CONNOR,

Clerk.

Memorandum: The defendant is required to file answer or other defense in the clerk's office on or before the twentieth day after service, excluding the day thereof; otherwise, the bill may be taken pro confesso.

(Signed)

JAS. J. O'CONNOR, *Clerk.*

Marshal's return

UNITED STATES OF AMERICA,

Eastern Division of the Eastern Judicial District of Missouri, ss.

I do hereby certify that the within named Frank White, treasurer of the United States, and Thomas W. Miller, Alien Property Custodian could not be found within the Eastern District of Missouri.

JOHN E. LYNCH,

United States Marshal.

By JNO. L. KENNEDY,

Deputy.

8

In United States District Court

Motion to dismiss. Filed May 5, 1923

Now come the defendants, Thomas W. Miller, as Alien Property Custodian, and Frank White, as Treasurer of the United States, separately and severally moving to dismiss the bill of complaint and as grounds for their separate and several motions assign the following:

(1) It appears affirmatively from the allegations of the bill of complaint that the Imperial German Government and/or its successor or successors has an interest in the subject matter of this suit and has not been made a party thereto;

(2) It does not appear from the allegations of the bill of complaint that the Imperial German Government and/or its successor or successors has consented that this court shall have jurisdiction to adjudicate with respect to claims against the said Government or to subject its property to the payment of claims against it;

(3) That the bill of complaint does not state grounds for equitable relief against these defendants within the jurisdiction of this court;

(4) The plaintiff has not stated facts sufficient to entitle it to equitable relief under the provisions of section 9 of the trading with the enemy act;

(5) That pursuant to the terms and provisions of the trading with the enemy act, the amendments thereto, and the treaty between the United States of America and Germany, signed August 25, 1921, and effective at the time of the filing of the bill of complaint herein,

the United States of America became and ever since said time
9 was and now is the owner of the moneys which plaintiff seeks
in this suit to subject to the payment of its claim.

II

In United States District Court

Answer

And now not waiving the many defects and insufficiencies of the bill of complaint, but insisting upon all the objections to the bill of

complaint hereinbefore set forth, these defendants separately and severally answer the bill of complaint, and for their separate and several answers say:

(1-2) These defendants admit the averments of paragraphs numbered 1 and 2 of the bill of complaint:

(3) That the allegations of paragraph numbered 3 of the bill of complaint are immaterial and irrelevant for the purposes of this suit, and these defendants should not be required to answer the same;

(4-5) They admit the averment of paragraphs numbered 4 and 5 of the bill of complaint:

(6) They have no knowledge or information sufficient to form a belief with respect to the averments of paragraph numbered 6 of the bill of complaint, and therefore demand strict proof thereof;

Further answering the said paragraph, these defendants separately and severally say that on or about the 13th day of February, 1920, Chandler & Company, Inc., as trustee, filed its notice of claim pursuant to the terms and provisions of section 9 of the trading with the enemy act for ninety-six thousand five hundred eighty dollars and fifty-five cents (\$96,580.55), which had theretofore been delivered to the Alien Property Custodian by the said Chandler & Company, Inc., as the money of the Imperial German Government. On the same date the said Chandler & Company, Inc., duly filed its application to the President for the allowance of the said claim under section 9 of the trading with the enemy act.

The said claim of Chandler & Company, Inc., was based upon the fact that the said ninety-six thousand five hundred eighty dollars and fifty-five cents (\$96,580.55) had been deposited with the claimant prior to October 6, 1917, for the payment of interest on notes of the Imperial German Government. Thereafter the said claim was allowed by the Attorney General of the United States, to whom the President had, by Executive order, delegated his authority under the terms and provisions of section 9 of the trading with the enemy act, and the Treasurer of the United States was ordered to pay to the said Chandler & Company, Inc., the sum of ninety-six thousand five hundred eighty dollars and fifty-five cents (\$96,580.55) out of money held in the Treasury of the United States, pursuant to the trading with the enemy act, in trust No. 555, as the property of the Imperial German Government. Thereafter the said claim was duly paid by the Treasurer of the United States of America. Said claim was allowed upon the finding of the Attorney General that the said money belonged to American citizens, both in the capacity of trustee and as cestui que trust.

(7) They have no knowledge or information sufficient to form a belief with respect to the averments of paragraph numbered 7 of the bill of complaint, and therefore demand strict proof thereof;

(8) Answering the averments of paragraph numbered 8 of the bill of complaint, these defendants separately and severally say that the Alien Property Custodian, acting under and pursuant to

the terms and provisions of the trading with the enemy act, the amendments thereto and the proclamations and Executive orders issued thereunder, after investigation determined that the Imperial German Government was an enemy within the purview and meaning of the said act, the amendments thereto, and the proclamations and Executive orders issued thereunder, and that certain moneys were owing or belonging to, held for, by, on account of and for the benefit of the said enemy. Thereupon the Alien Property Custodian required the said moneys and other property to be conveyed, transferred, assigned, delivered, and/or paid to him, to be by him held, administered, and accounted for as provided by law. Thereafter the demands of the Alien Property Custodian were fulfilled and he received certain moneys, pursuant to the said demand, and paid the same to the Treasurer of the United States, in accordance with the provisions of the trading with the enemy act. The amount of said moneys received as aforesaid is, at the present time, approximately five hundred fifteen thousand five hundred seventy-one dollars (\$515,571) and is held by the Alien Property Custodian in trust No. 555.

Further answering said paragraph, these defendants separately and severally say that the Alien Property Custodian, acting under and pursuant to the terms and provisions of the trading with the enemy act, the amendments thereto, and the proclamations and Executive orders issued thereunder, after investigation determined that certain money was by Lee, Higginson & Company, of Boston, Massachusetts, in the approximate amount of five million dollars (\$5,000,000) was held for, by, on account of, and for the benefit of an unknown enemy. Thereupon the Alien Property Custodian required the said money to be paid to him. Thereafter the demand of the Alien Property Custodian was fulfilled, and he received as aforesaid the said sum of five million dollars (\$5,000,000), which he paid to the Treasurer of the United States, in accordance with the terms and provisions of the trading with the enemy act, and the said money was thereupon placed to the credit of unknown enemy No. 1, in trust No. 9322. Thereafter and to wit, on or about the 8th day of March, 1923, the Alien Property Custodian determined that two million two hundred thousand dollars (\$2,200,000) of the five million dollars (\$5,000,000) received as aforesaid was at the time of the receipt thereof by the Alien Property Custodian, held for, by, on account of, and for the benefit of the Imperial German Government. Thereupon the Alien Property Custodian directed the Treasurer of the United States to transfer from trust No. 9322 the sum of two million two hundred thousand dollars (\$2,200,000), and to place the same to the credit of the Imperial German Government, opening a special account designated "trust 555, special." Thereafter the Treasurer of the United States, pursuant to the said instructions so transferred the said two million two hundred thousand dollars (\$2,200,000) to said trust.

Further answering said paragraph, these defendants say that they have no further knowledge, information, or belief with respect to the ownership of any of the said money received as aforesaid by the Alien Property Custodian, and this court must determine out of what, if any, of the money held by the Alien Property Custodian and/or the Treasurer of the United States, any claim which these defendants may establish must be paid.

(9) They have no knowledge or information sufficient to form a belief with respect to the averments of paragraph numbered 9 of the bill of complaint, and therefore demand strict proof thereof;

(10) They admit the averments of paragraph numbered 10 of the bill of complaint.

III

For further separate and several answer to the bill of complaint, these defendants separately and severally say:

(11) That these defendants are officers of the United States of America, and are sued as such;

13 (12) That this is a suit against the United States of America;

(13) That the United States of America is a body politic;

(14) That the Imperial German Government or its successor or successors is an enemy within the meaning of the terms and provisions of the trading with the enemy act, as amended;

(15) That the President of the United States did, on April 6, 1917, by proclamation, declare that a state of war existed between the United States of America and the Imperial German Government;

(16) That subsequent to the 6th day of April, 1917, and until the 2nd day of July, 1921, a state of war existed between the United States of America and the Imperial German Government, and for a large portion of said period the United States of America, its officers and agencies, were actively engaged in the prosecution of the said war;

(17) That on the 11th day of November, 1918, an armistice was signed by the United States of America and its allies, on the one side, and the Government of Germany on the other;

(18) That subsequent to the 11th day of November, 1918, the military forces of the United States of America occupied certain territory of Germany;

(19) That the said occupation of the territory of Germany by the military forces of the United States of America began on or about the 18th day of December, 1918;

(20) That said occupation of the territory of Germany has not been completely terminated;

14 (21) That during the said occupation of the territory of Germany the United States of America expended and laid out large sums of money in the maintenance of the said military forces occupying the said territory, the sum of two hundred fifty-five million five hundred twenty-five thousand two hundred

ninety-eight dollars and forty-five cents (\$255,525,298.45), for all of which sum Germany has agreed to reimburse the United States of America;

(22) That at various times since December 18, 1918, accounts covering the expenses of the maintenance of the military forces of the United States of America in the occupation of German territory, have been stated between Germany and the United States of America, the last of said statements of account having been made on the 31st day of January, 1923. That said statements made as aforesaid were each and all made, rendered, and presented to the Reparations Commission, created and established by the treaty of Versailles, and which said commission, so established and created, was at all times acknowledged by Germany as the proper body to which such accounts should be presented and rendered. These defendants aver that upon such statement of account presented as aforesaid, a balance of two hundred fifty-five million five hundred twenty-five thousand two hundred ninety-eight dollars and fifty-four cents (\$255,525,298.54) was found to be due and owing from Germany to the United States of America;

(23) That being so indebted to the United States of America as aforesaid, Germany then and there undertook and promised to pay the United States of America the said sum of two hundred fifty-five million five hundred twenty-five thousand two hundred ninety-eight dollars and fifty-four cents (\$255,525,298.54).

(24) That Germany has not paid the said sum, nor any part thereof, and said entire sum now remains due and owing from Germany to the United States of America;

15 (25) That these defendants as officers of the United States of America and the United States of America now make claim against any money seized by the Alien Property Custodian as the money of the Imperial German Government for the payment of the said amount, and the United States of America is entitled to the satisfaction of its claim out of any funds of the Imperial German Government in the hands of the Alien Property Custodian prior to the satisfaction of the claim of the plaintiff herein.

IV

For further separate and several answers to the bill of complaint, these defendants separately and severally say:

(26) That these defendants repeat and include herein the allegations in paragraphs numbered 11 to 16, both inclusive;

(27) That between the 6th day of April, 1917, and the 2nd day of July, 1921, the United States of America requisitioned, seized, and chartered certain vessels belonging to Dutch nationals and also certain vessels of American registry which were then and there in ports of the United States, and also seized certain other vessels formerly

owned by subjects of Germany, all of which vessels so requisitioned, seized, and/or chartered by the United States Government were, subsequent to the seizure thereof and during said period, damaged and/or destroyed by Germany, and that by reason of such destruction of said vessels the United States of America suffered and sustained damages in the amount of more than fifty million one hundred forty-nine thousand two hundred sixty-five dollars and ninety-seven cents (\$50,149,265.97); that thereafter and prior to the com-

16 mencement of this suit, Germany agreed to pay to the United States of America for damages sustained by reason of the destruction of said vessels aforesaid, the sum of fifty million one hundred forty-nine thousand two hundred sixty-five dollars and ninety-seven cents (\$50,149,265.97); that a true and correct list of each and all of said vessels so destroyed at said time, is hereto attached, marked "Exhibit A," and hereby made a part of this answer;

(28) That between the 6th day of April, 1917, and the 2nd day of July, 1921, certain vessels which were then and there the property of and owned by the United States of America, were destroyed by Germany, and that said vessels were of the reasonable worth and value of twelve million one hundred forty-four thousand ninety-five dollars and twenty-seven cents (\$12,144,095.27); that by reason of the destruction of said vessels by Germany, the United States of America suffered and sustained damages in the sum of twelve million one hundred forty-four thousand ninety-five dollars and ninety-seven cents (\$12,144,095.27), and that Germany has agreed to reimburse and pay to the United States of America the said sum of money, for and on account of the destruction of the said property; that a true and correct list of said vessels, together with various items of damages sustained by the United States by reason of the destruction of said vessels, is attached hereto, marked "Exhibit B," and hereby made a part of this answer;

(29) By reason of the wrongful acts of Germany set forth in paragraphs numbered 27 and 28, both inclusive, the United States of America has been damaged in the amount of sixty-two million two hundred ninety-three thousand three hundred sixty-one dollars and twenty-four cents (\$62,293,361.24), for all of which damage

Germany has agreed to reimburse the United States and to
17 pay to the United States of America sums of money equal to the amount of the said damages;

(30) That Germany has not paid the said sum of sixty-two million two hundred ninety-three thousand three hundred sixty-one dollars and twenty-four cents (\$62,293,361.24), or any part thereof, and the said entire sum now remains due and owing from Germany to the United States of America;

(31) That the United States is entitled to the payment out of any money of the Imperial German Government in the possession of the Alien Property Custodian, and/or the Treasurer of the United

States, of the said sum of money due to the United States from Germany prior to the payment of any claim which the plaintiff herein may have against the Imperial German Government, and/or its successor or successors.

V

For further separate and several answers to the bill of complaint, these defendants separately and severally say:

(32) That on or about the 4th day of August, 1914, a state of war became flagrant between Germany, on the one side, and France, England, and their allies on the other;

(33) That after the outbreak of war referred to in paragraph numbered 32, the United States of America, in accordance with certain acts of Congress, passed for that purpose, issued for valuable consideration, certain policies of insurance upon certain vessels and their cargoes. The names of the said vessels, together with the policies covering the same and their cargoes, are contained in 18 columns 1 and 2 of Exhibit C, which is attached hereto and made a part hereof;

(34) That after the outbreak of the war referred to in paragraph 32, the United States of America, in accordance with certain acts of Congress, passed for that purpose, issued for valuable consideration certain policies of insurance upon the lives of the crews of the said vessels. The names of the said persons upon whose lives the said insurance was issued, together with the policies covering the same, are contained in columns 1 and 2 of Exhibit D, which is attached hereto and made a part hereof;

(35) That during the time that said policies of insurance were in full force and effect, the said vessels and their cargoes were destroyed by Germany;

(36) During the time the said policies of insurance upon the lives of the said persons were in full force and effect, the said persons were killed by Germany at the same time the said vessels were destroyed;

(37) That by reason of the said destruction of the said vessels and their cargoes, and the killing of the said persons, the United States of America became liable to pay to the owners of the said vessels and of the said cargoes and to the beneficiaries of the policies of insurance upon the lives of the said persons, large sums of money, by virtue of the terms of the said policies of insurance, which sums of money the United States of America has long since paid. The sums of money paid under the said policies for the loss of the said vessels and their cargoes are set forth in column 3 of Exhibits C and D, attached hereto, opposite the name of the vessel and cargo, and the person killed as aforesaid, for which the said money was paid;

(38) That upon the payment of the said sums of money the United States of America became and was subrogated to all the

rights of the owners of the said vessels and cargoes against
19 Germany for the recovery of the said sums of money by reason of the destruction of the said vessels and cargoes by Germany;

(39) That by reason of the premises aforesaid a right has accrued to the United States of America against Germany for the payment to the United States of America of the sum of twenty-nine million three hundred four thousand five hundred fifty-two dollars and eighty-five cents (\$29,304,552.85).

(40) That by reason of the said payment of insurance the United States has been damaged in the said sum of twenty-nine million three hundred four thousand five hundred fifty-two dollars and eighty-five cents (\$29,304,552.85), for all of which Germany has agreed to reimburse the United States of America;

(41) That Germany has not paid said sum nor any part thereof and said entire sum now remains due and owing from Germany to the United States of America;

(42) That the United States of America is entitled to receive payment of the said sum out of any money of the Imperial German Government, and/or its successor or successors, in the possession of the Alien Property Custodian prior to the payment of any claim which the plaintiff herein may establish.

Wherefore, these defendants having fully answered the bill of complaint pray:

1. That the bill of complaint be dismissed;

(2) That this court adjudge and decree that the United States of America is entitled to retain any and all moneys now in the possession of the Alien Property Custodian and/or the Treasurer of the United States, which is now held in the name of the Imperial German Government, to be applied upon the debt due by Germany to the United States of America;

20 (3) That this court grant unto these defendants such other and further relief to which in the premises they may be duly entitled, and that these defendants recover their costs and disbursements herein.

(Sgd) THOMAS W. MILLER,
 Alien Property Custodian.

(Sgd) FRANK WHITE,
 Treasurer of the United States.

(Sgd) ALLEN CURRY,
 United States Attorney.

[Duly sworn to by Thomas W. Miller and Frank White; jurats omitted in printing.]

EXHIBIT A TO ANSWER

		Chargeable to Germany
Vessel:		
A. A. Raven	.....	\$1, 407, 993. 21
Allamance	.....	1, 413, 342. 06
Atlantic Sun	.....	799, 332. 65
Berwind	.....	581, 030. 59
Buenaventura	.....	1, 538, 814. 00
Carolina	.....	1, 153, 008. 39
Cubore	.....	2, 829, 647. 05
Harry Luckenbach	.....	750, 900. 00
Joseph Cudahy	.....	1, 388, 099. 90
John C. McCullough	.....	522, 577. 22
Montanan	.....	2, 525, 436. 67
Onega	.....	39, 440. 00
O. B. Jennings	.....	30, 633. 20
Piner del Rio	.....	838, 431. 99
Santa Maria	.....	1, 877, 251. 56
Tyler	.....	1, 166, 695. 90
Winneconne	.....	733, 369. 98
California	.....	2, 281, 118. 42
		<hr/> 21, 876, 584. 47 <hr/>
Freighters:		
Actason	.....	832, 252. 66
Chattahoochee	.....	1, 752, 862. 66
Owasco	.....	346, 038. 40
Ticonderoga	.....	1, 358, 811. 28
Tippecanoe	.....	2, 743, 296. 40
Passenger:		
Covington	.....	7, 710, 244. 20
President Lincoln	.....	5, 153, 307. 62
		<hr/> 19, 896, 813. 54 <hr/>
Vessel:		
Merak	.....	\$1, 705, 691. 60
Texal	.....	1, 816, 603. 76
Yeehavan	.....	1, 897, 802. 51
		<hr/> 5, 419, 907. 96 <hr/>
Vessel:		
Costdijk (1)	.....	\$413, 914. 46
Liberty Glo	.....	1, 281, 058. 54
Englewood (2)	.....	263, 851. 90
		<hr/> 1, 938, 824. 00 <hr/>
Vessel:		
Crimden	.....	\$490, 394. 15
P-38 Coloria	.....	526, 711. 05
Vessel:		
Council Bluffs	.....	\$991, 803. 74
Dora	.....	1, 494, 094. 31
Lake Edon	.....	863, 689. 04
Lake Owens	.....	907, 662. 78
Lake Placid	.....	926, 029. 13
Lake Portage	.....	852, 199. 89
Lucia	.....	2, 686, 568. 90
Mopang	.....	1, 138, 523. 16
West Arvada	.....	2, 283, 224. 32
		<hr/> 12, 144, 095. 27 <hr/>

Vessel	Policy No.	Amount of claim paid by U. S. A.
A. A. Raven	9982-9992 10103-10104 10140-10141 10172-10175 10181-10184 10280	\$2, 881. 82
A. B. Sherman (hull)	4660	15, 859. 20
" " " "	4660	1, 071. 00
Alamance	13520	126. 27
" " " "	14181	6, 499. 06
" " " "	14249	25. 00
" " " "	14250	30. 00
Anna R. Reedrotter (hull)	11850	3, 592. 23
A. Piatt Andrew	20391	100. 00
" " " "	"	100. 00
" " " "	"	100. 00
" " " "	"	100. 00
" " " "	20392	1, 200. 00
Argonaut (hull)	16227	516, 500. 00
" " " "	15203	15, 760. 25
" " " "	15277	13, 813. 75
" " " "	15370	35, 000. 00
Borinquen (hull)	1817	3, 806. 07
C. A. Canfield (hull)	20122	15, 898. 63
" " " "	"	250. 00
Campana (hull)	6087	1, 149, 563. 00
Carib	619-621 627-628 701-705	235, 850. 00
23 Chincha (hull)	15076	12, 082. 40
" " " "	"	75. 00
Christiane (hull)	6435	30, 000. 00
Cruiser (hull)	27052	3, 000. 00
Dirigo (hull)	2557	175, 000. 00
" " " "	3806	70, 000. 00
" " " "	3817	15, 000. 00
D. N. Luckenbach (hull)	10974	219, 957. 00
" " " "	10462	22, 100. 00
" " " "	10766	10. 00
" " " "	10889	110, 900. 00
" " " "	10971	8, 000. 00
" " " "	10985	15, 427. 77
" " " "	11024	24, 250. 00
" " " "	11025	46, 100. 00
" " " "	11026	122, 550. 00
" " " "	11130	47, 100. 00
" " " "	11133	531, 011. 72
" " " "	11238	25, 000. 00
" " " "	13145	9, 000. 00
Dorothy B. Barrett (hull)	17941	585. 18
" " " "	"	1, 170. 37
" " " "	"	1, 170. 37
" " " "	"	1, 170. 37
" " " "	"	585. 18
" " " "	"	585. 18
" " " "	"	585. 18
" " " "	"	585. 18
" " " "	"	585. 18
" " " "	"	1, 170. 37
" " " "	"	585. 18
" " " "	"	585. 18
" " " "	"	1, 170. 37
" " " "	"	585. 18
" " " "	"	585. 18
" " " "	"	585. 18

Vessel			Policy No.	Amount of claim paid by U. S. A.
Dorothy B. Barrett (hull)			17941	\$585. 18
"	"	"	"	585. 18
"	"	"	"	585. 18
"	"	"	"	585. 18
"	"	"	"	585. 18
"	"	"	"	6, 437. 03
"	"	"	"	5, 266. 65
"	"	"	"	292. 61
"	"	"	"	585. 18
"	"	"	"	585. 18
"	"	"	"	292. 61
"	"	"	"	585. 18
"	"	"	"	1, 170. 37
"	"	"	"	1, 170. 37
"	"	"	"	585. 18
24	"	"	"	585. 18
"	"	"	"	585. 18
"	"	"	"	585. 18
"	"	"	"	585. 18
"	"	"	"	585. 18
"	"	"	"	1, 170. 37
"	"	"	"	1, 170. 37
"	"	"	"	585. 18
"	"	"	"	585. 18
"	"	"	"	585. 18
"	"	"	"	292. 61
"	"	"	"	585. 18
"	"	"	"	585. 18
"	"	"	"	585. 18
"	"	"	"	2, 340. 74
"	"	"	"	1, 170. 37
"	"	"	"	385. 18
"	"	"	"	1, 170. 37
Dorothy B. Barrett (hull)			17941	292. 61
"	"	"	"	146. 31
"	"	"	"	1, 170. 37
"	"	"	"	1, 170. 37
"	"	"	"	2, 340. 74
"	"	"	"	585. 18
"	"	"	"	585. 18
"	"	"	"	585. 18
"	"	"	"	585. 18
"	"	"	"	585. 18
"	"	"	"	585. 18
"	"	"	"	146. 31
"	"	"	"	585. 18
"	"	"	"	1, 170. 37
"	"	"	"	292. 61
"	"	"	"	585. 18
"	"	"	"	585. 18
"	"	"	"	2, 340. 74
"	"	"	"	585. 18
"	"	"	"	585. 18
"	"	"	"	1, 170. 37
"	"	"	"	292. 61
"	"	"	"	1, 170. 37
"	"	"	"	585. 18
"	"	"	"	585. 18
"	"	"	"	1, 170. 37
"	"	"	"	1, 170. 37
"	"	"	"	585. 18
"	"	"	"	292. 61
"	"	"	"	585. 18
"	"	"	"	585. 18
"	"	"	"	7, 022. 20

Vessel	Policy No.	Amount of claim paid by U. S. A.
Grace (hull)	4711	\$449, 978. 10
25 "	4026	7, 000. 00
"	4027	8, 000. 00
"	4028	3, 000. 00
"	4029	26, 745. 19
"	4126	170, 638. 00
"	4616	700. 00
"	4712	2, 000. 00
"	4935	1, 000. 00
"	4944	375. 00
"	5047	38, 473. 37
"	5096	300. 00
Greenbrier (hull)	4840	950. 00
Hildegard (hull)	801	50, 000. 00
Hilonian (hull)	5737	28, 000. 00
"	2565	275, 000. 00
"	2708	20, 000. 00
"	2787	576. 00
"	2937	7, 844. 00
"	2938	3, 963. 00
"	2939	4, 073. 00
"	2950	2, 000. 00
"	2991	13, 732. 00
"	3000	10, 600. 00
"	3001	500. 00
"	3027	3, 175. 00
"	"	160. 00
"	"	425. 00
"	"	85. 00
"	"	1, 895. 00
"	3067	750. 00
"	3149	8, 000. 00
"	3191	9, 500. 00
Hilonian	3157	3, 300. 00
"	3185	14, 413. 53
"	3210	6, 083. 00
"	3211	7, 402. 00
"	3212	3, 087. 00
"	3301	14, 000. 00
"	3731	7, 500. 00
"	3328	850. 00
"	3380	5, 800. 00
"	3387	1, 050. 00
"	3390	475. 00
"	3391	1, 650. 00
"	3494	570. 00
"	3495	160. 00
"	3496	355. 00
"	3498	1, 045. 00
"	3499	7, 525. 00
26 "	3500	5, 075. 00
"	3644	1, 400. 00
"	3646	750. 00
"	3647	250. 00
"	3648	2, 000. 00
"	3649	2, 800. 00
"	3667	1, 325. 00
"	3682	3, 500. 00
"	3732	2, 000. 00
"	3787	900. 00
"	4664	62, 590. 00
"	"	200. 00
"	"	2, 210. 00

Vessel	Policy No.	Amount of claim paid by U. S. A.
Orleans (hull)	5909	\$10,000.00
"	5946	1,600.00
"	6049	7,574.00
Orleans	6050	8,500.00
"	6067	32,150.00
"	6096	95,000.00
"	6120	19,162.00
"	6165	107,334.45
"	6341	54,900.00
"	6342	2,800.00
"	6418	1,000.00
"	6419	200.00
Percy Birdsall (hull)	2403	25,000.00
Petrolite (hull)	3833	475,000.00
Platuria (hull)	6086	565,000.00
Progress (hull)	19548	5,993.00
Portland (hull)	1106	1,064.84
Robert & Richard (hull)	18252	11,950.00
Rush (hull)	20068	30,938.00
Rochester	10130	250.00
"	"	250.00
"	"	160.30
"	"	226.50
28	"	100.00
"	"	100.00
"	"	66.15
"	"	500.00
"	"	250.00
"	"	100.00
"	"	100.00
"	"	100.00
Rockingham (hull)	2560	799,941.60
"	27075	4,150.00
Schuylkill (hull)	9659	599,905.49
"	9847	49,948.36
"	10285	3,136.00
"	10291	3,000.00
"	10523	10,930.29
"	10524	2,342.48
"	10525	14,500.00
"	10526	14,500.00
"	10528	34,633.19
"	10529	7,426.49
"	10682	30,000.00
"	10700	300.00
"	10706	21,000.00
"	10720	1,350.00
"	10721	1,675.00
"	10799	23,750.00
"	10942	15,200.00
"	11160	194,678.00
"	10816	3,500.00
"	10891	10,900.00
"	10892	10,350.00
"	10893	6,500.00
"	10894	9,750.00
"	10895	8,300.00
"	10896	8,600.00
"	10897	8,250.00
"	10898	8,200.00
Schuylkill	10899	28,000.00
"	10900	30,000.00
"	10901	52,000.00

Vessel	Policy No.	Amount of claim paid by U. S. A.
Stanley M. Seaman	19323	\$2, 812. 50
" " "	"	1, 875. 00
" " "	"	1, 875. 00
" " "	"	1, 875. 00
" " "	"	3, 750. 00
" " "	"	937. 50
" " "	"	1, 875. 00
" " "	"	1, 875. 00
" " "	"	1, 875. 00
" " "	"	937. 50
" " "	"	937. 50
" " "	"	1, 875. 00
" " "	"	1, 875. 00
" " "	"	1, 875. 00
Suruga (hull)	13037	150, 000. 00
" " "	"	214, 503. 18
" " "	"	858. 50
" " "	"	9. 10
St. Louis (hull)	4075	12, 879. 24
Wm. H. Clifford (hull)	6459	50, 000. 00
Wm. H. Starbuck (hull)	20421	2, 133. 33
" " "	"	1, 066. 67
Wilmore (hull)	8961	1, 375, 000. 00
Total		\$17, 424, 229. 22

[illegible]

Vessel	Policy No.	Amount of claim paid by U. S. A.
Argonaut	15124	\$20, 989
"	15125	21, 416
"	15126	21, 678
"	15127	43, 684
"	15286	111, 002
"	15287	175, 198
"	15288	27, 913
"	15289	66, 008
"	15307	63, 882
"	15308	4, 503
"	15309	32, 849
"	15310	76, 280
"	15311	25, 596
"	15331	20, 750
"	15375	89, 000
"	15376	28, 600
"	15457	99, 500
"	15458	26, 600
"	15463	28, 050
"	15464	32, 300
"	15465	29, 400
"	15466	27, 800
"	15548	31, 000
"	15549	91, 000
"	15550	118, 800
"	15551	58, 100
"	15552	142, 550
"	15553	57, 500
"	15554	110, 600
Argonaut	15555	30, 350
"	15566	26, 619. 21
"	15567	33, 755. 84
"	15568	17, 940. 69
"	15569	16, 633. 75
"	15570	6, 843. 60
"	15571	48, 356. 69
32	15586	31, 905
"	15589	64, 206. 38
"	15590	31, 867. 07
"	15591	31, 999. 10
"	15592	31, 351. 01
"	15593	32, 161. 08
"	15594	32, 727. 55
"	15595	65, 380
"	15596	33, 080
"	15622	60, 166. 65
"	15623	58, 479. 52
"	15725	29, 641. 34
"	15726	149, 276. 59
"	15727	26, 442
"	15777	112, 821. 94
"	15778	29, 490. 37
"	15780	31, 627. 88
"	15781	31, 509. 07
"	15782	29, 085. 30
"	15783	59, 399. 84
"	15784	61, 639. 92
"	15785	59, 929. 02
"	15786	31, 050
"	15787	28, 850

Vessel	Policy No.	Amount of claim paid by U. S. A.
Argonaut	15820	\$14, 870
"	15821	11, 705
"	15822	58, 230
"	15823	15, 476
"	15841	69, 861
"	15851	28, 111. 04
"	15852	27, 279. 35
"	15853	54, 511. 18
"	15854	54, 487. 41
"	15954	27, 160. 53
"	15955	27, 493. 22
"	15993	42, 629. 92
"	15994	14, 114. 92
"	15995	28, 847. 68
"	16012	14, 162
"	16013	29, 000
"	16014	29, 400
"	16068	28, 150
"	16295	26, 143. 50
"	16296	58, 408. 22
"	16297	85, 212. 32
"	16298	83, 382. 62
"	16299	27, 250. 83
Dirigo	3187	18, 943
"	3428	4, 300
D. N. Luckenbach	10766	41, 147. 97
"	10800	7, 036. 48
33	10876	12, 229. 11
"	"	9, 296. 24
"	"	1, 063. 59
"	11002	92, 039
"	11040	12, 500
D. N. Luckenbach	11103	1, 297. 02
"	11240	23, 780. 53
Grace	3979	8, 500
"	3997	7, 500
"	3998	1, 400
"	4018	10, 000
"	4034	18, 000
"	4042	3, 800
"	4128	9, 500
"	4129	9, 500
"	4130	7, 277
"	4131	3, 030
"	4190	3, 000
"	4191	7, 500
"	4251	2, 800
"	4265	2, 000
"	4266	40, 000
"	4320	35, 000
"	4321	9, 340
"	4321	2, 300
"	4402	5, 000
"	4403	5, 000
"	4404	8, 000
"	4439	2, 750
"	4507	22, 000
"	4508	3, 000
"	4583	6, 000
"	4671	1, 000
"	4693	22, 000
"	4724	4, 500
"	4818	410
"	4819	1, 650

Vessel		Policy No.	Amount of claim paid by U. S. A.
Grace		4820	\$1, 150
"		4856	3, 850
"		4891	35, 000
"		4892	32, 000
"		4933	4, 833. 19
"		4936	4, 500
"		4981	460
"		5259	20, 000
Harwood Palmer		3120	15, 150
"	"	3120	51, 350
34 Hilonian		2802	1, 952
"		2984	3, 000
Hilonian		2990	12, 334
"		2992	35, 425
"		2996	6, 600
"		3027	660
"		"	230
"		"	1, 580
"		"	1, 310
"		"	4, 190. 59
"		"	865
"		3089	1, 500
"		3090	1, 000
"		3091	900
"		3092	1, 100
"		3093	1, 800
"		3094	1, 400
"		3181	3, 110
"		3182	5, 365
"		3183	8, 240
"		3195	35, 000
"		3310	800
"		3330	1, 100
"		3381	285
"		3382	1, 100
"		3383	1, 450
"		3384	1, 250
"		3385	925
"		3386	660
"		3388	1, 825
"		3389	140
"		3417	24, 719. 52
"		3497	280
"		3645	2, 800
"		3679	600
"		3680	80
"		3681	25
J. L. Luckenbach		10266	109. 95
"		10267	161. 48
"		10301	1, 880. 41
"		10333	27. 45
"		10346	592. 87
"		10365	182. 60
"		10377	25. 25
"		10437	453. 78
"		10463	14. 82
"		10481	145. 57
"		10490	63. 12
"		10494-10495	42. 64
35		10496	92. 56
"		10614	51. 60
"		10618-10619	143. 71
"		10990	1, 217. 86

Vessel	Policy No.	Amount of claim paid by U. S. A.
J. L. Luckenbach	10751	\$104. 41
"	10753	78. 69
Kansas	5130	279, 154. 17
"	5483	1, 200
"	5484	12, 150
"	5485	12, 700
"	5523	1, 300
"	5524	4, 750
"	5525	7, 000
"	6153	2, 700
"	6168	6, 250
"	6301	5, 600
"	6302	650
"	6346	162, 030
"	6348	27, 720
"	6349	13, 272
Lewis Luckenbach	7773	189, 000
"	7774	8, 000
"	8943	73, 500
"	9324	5, 093. 18
"	9325	67, 984. 05
"	9655	2, 200
"	9665	14, 407. 59
"	9666	8, 052. 60
"	9667	3, 544. 78
"	9688	103, 000
"	"	1, 924. 98
"	"	4, 392. 38
"	"	1, 464. 86
"	"	1, 918. 40
"	9773	4, 868
"	9827	18, 000
Lewis Luckenbach	10040	2, 985
"	10041	2, 985
"	10042	7, 255. 85
"	10043	15, 543. 44
"	10044	31, 141
"	10045	11, 103
"	10046	18, 568
"	10056	6, 600
"	10070	31, 800
"	10071	5, 750
"	10072	14, 200
"	10073	60
"	10074	26, 000
"	10075	13, 000
"	10076	650
"	10146	2, 700
"	10152-3	110, 903. 30
"	10155	
"	10185-6	
"	10154	61, 980
"	10187	10, 708
"	10188	31, 105
"	10211	15, 000
"	10270	7, 200
"	10400	300
"	16568	67, 232. 61
Lizzie E. Dennison	3675-8	60, 461. 42
Madrugada	19348	71, 527. 05
Magnus Manson	2461	93, 960
Navajo	4985-6	922. 67

Vessel		Policy No.	Amount of claims paid by U. S. A.
New York		2460	8662.56
" "		2460	16,992.21
" "		2483	359.21
" "		2702	143.33
Orleans		5519	3,750
" "		5719	4,700
" "		5720	1,575
" "		5721	40,200
" "		5761	18,300
" "		5823	3,460
" "		5852	11,600
" "		5855	2,200
" "		5856	400
" "		5861	1,300
" "		5862	1,200
" "		5863	400
" "		5864	1,500
" "		5865	5,200
" "		5867	2,000
" "		5868	1,200
" "		5869	400
" "		5870	600
" "		5943	55,550
" "		6808	35,000
" "		6810	78,910
Rochester		10130	100
" "		"	100
" "		"	100
" "		"	100
" "		"	100
" "		"	100
" "		"	100
37 Rochester		10130	100
" "		"	100
" "		"	100
" "		"	50
" "		"	100
" "		"	100
" "		"	100
" "		"	100
" "		"	100
" "		"	100
" "		"	100
Rockingham		2508	15,150
" "		2525	6,500
" "		2481	24,691.84
" "		2481	819.91
" "		2481	1,074.20
" "		2481	22,440.32
" "		2485	4,200
" "		2582	2,200
" "		2615	16,000
" "		2615	11,000
" "		2860	4,000
" "		3188	7,363.13
" "		3189	598.69
" "		3208	350,000
Schuylkill		9260	3,000
" "		9559	1,800
" "		9735	15,200
" "		9944	6,258.56

Vessel	Policy No.	Amount of claim paid by U. S. A.
Schuylkill	9945	\$5, 320
Schuylkill	9957	5, 325. 07
"	10068	6, 897
"	10069	1, 200
"	"	1, 271. 97
"	"	1, 200
"	"	4, 200
"	"	6, 825
"	"	2, 275
"	"	1, 128. 03
"	"	1, 200
"	"	1, 200
"	"	3, 764. 43
"	"	4, 200
"	"	3, 300
"	"	1, 000
"	10127	2, 000
"	10230	11, 800
38	10290	1, 341. 05
"	10296	25, 700
"	10297	14, 000
"	10304	23, 665. 25
"	10334	6, 000
"	13033	9, 000
"	10360	7, 550
"	10341	3, 000
"	10369	19, 207. 50
"	10371	6, 000
"	10388	9, 800
"	10394-5	4, 917. 80
"	10402-3	19, 900
"	10405	600
"	10435	11, 939. 55
"	10436	4, 300
Schuylkill	10448	24, 000
"	10473	4, 000
"	10474	4, 500
"	10475	21, 912
"	10476	4, 019
"	10477	6, 645
"	10478	2, 235
"	10479	1, 325
"	10480	1, 461
"	10504	600
"	10507	16, 260
"	10508	5, 049
"	10509	5, 013. 25
"	10510	4, 974. 91
"	10511	1, 901
"	10512	6, 900
"	10513	5, 600
"	10514	1, 424. 11
"	10515	5, 800
"	10527	4, 383. 44
"	10552	550
"	10601	6, 000
"	10602	2, 300
"	10594	2, 260
"	"	4, 000
"	"	8, 076. 92
"	"	2, 000
"	"	1, 740
"	"	1, 169. 06
"	"	6, 600
"	"	7, 830. 94

Vessel	Policy No.	Amount of claim paid by U. S. A.
Schuylkill	10594	\$142. 03
"	10645	14, 000
"	10646	17, 200
39 Schuylkill	10648	3, 000
"	10649	12, 400
"	10651	3, 000
"	10671	5, 900
"	"	2, 100
"	"	700
"	"	5, 600
"	10683	1, 000
"	10686	4, 500
"	10696	5, 800
"	10697	1, 900
"	10698	1, 800
"	10699	584. 61
"	10701	3, 000
"	10702	8, 000
"	10714	816
"	"	6, 300
"	"	4, 057. 97
"	10718	4, 300
"	10724	26, 500
"	10725	4, 950
"	10765	396. 03
"	10791	5, 289. 27
"	10792	35, 500
"	11242	2, 000
"	10811	19, 467. 54
"	10822	8, 500
"	10929	78, 039. 57
"	10933	13, 100
"	10941	19, 000
"	10949	973. 27
"	10952	600
"	10964	24, 649. 13
"	10965	4, 950. 27
Schuylkill	11019	2, 596. 35
"	11261	20, 000.
"	11284	32, 285.
Stanley M. Seaman (hull)	19323	1, 875.
Total		9, 269, 215. 65

Vessel	Policy No.	Amount of claim paid by U. S. A.
Wm. P. Frye (hull)	34	\$10, 000. 00
" " " "	98	1, 550. 00
Evelyn (hull)	636	100, 000. 00
"	637	241, 961. 57
Carib (hull)	576	22, 235. 56
40 Illinois (hull)	2270	250, 000. 00
Healdton (hull)	1878	450, 000. 00
"	1902	48, 888. 82
Edwin R. Hunt (hull)	2364	49, 776. 67
New York (hull)	1833	164, 051. 49
Vacuum (hull)	2326	999, 976. 60
		2, 338, 440. 71
Amount claimed in American schedule		17, 424, 229. 22
Total American claims		19, 762, 669. 93

Vessel	Policy No. S. L.	Name of insured	Amount of claim paid by U. S. A.
Albance	624	Carrasco, Pio M.	\$1, 500
"	"	Fralic, Laurie	1, 500
"	"	Fujiwara, Shintaro	1, 500
"	"	Ito, L. (Lyujiro or Ryujiro)	1, 500
"	"	Utsunomiya, Magoichiro	1, 500
Atlantic Sun	724	Daniels, Charles T., jr.	1, 500
"	"	Glass, Harry H. (injury)	1, 500
"	"	Hertoge, Henri Clement	2, 520
"	"	Johnson, David (detection)	2, 083. 34
Campana	163	Oliver, Albert (detention)	4, 050
Chincha	811	Falt, Karl Victor	1, 500
"	"	Ogami, Kurakichi	1, 500
"	"	Yamamoto, B.	1, 500
D. N. Luckenbach	286	Chronis, Demosthenes (Demivis)	1, 200
"	"	Evangelacos, Denis	1, 500
"	"	Olsen, Trygve Fredrik	2, 520
"	"	Pennea, Albert A.	2, 280
"	"	Villanos, Peter (Paragatos, Villanos D.)	1, 500
Florence H.	906	Amiot, Manuel Alvarez	1, 500
"	"	Beans, John	2, 520
"	"	Bentley, Edmund	1, 500
"	"	Butterfield, Fred J.	4, 500
"	"	Collins, Martin L.	1, 500
"	"	Cudahy, Howard L.	2, 160
"	"	Geldart, Leonard Brown	1, 500
"	"	Goodwin, Carl L.	1, 500
"	"	Kato, S.	1, 500
41 Florence H.	906	Lamoreaux, Joseph L., jr.	1, 500
"	"	Matsumoto, T.	1, 500
"	"	Miyake, Terauchiro	1, 800
"	"	Mori (Moni), Chukich	1, 500
"	"	Novoa, Oscar S. (A.)	1, 500
"	"	Pausche, John (John Arnold)	1, 500
"	"	Overington, Russell	2, 340
"	"	Randle, Arthur W.	1, 500
"	"	Rondoni, Basilio	1, 500
"	"	Santos, C. F. (Casuto Ferreira dos)	1, 500
"	"	Scardace, Carlo	1, 500
"	"	Simpson, Charles	1, 500
"	"	Tamura, Noboru	1, 500
"	"	Umetsu, S.	1, 500
"	"	Wasnak, Joseph Andrew	1, 500
"	"	West, Percy D. (injury)	750
"	"	Yamagata, H.	1, 500
"	"	Yamaguchi, Suyetaro	1, 500
"	"	Yoshisawa, Elmatau	1, 500
Freida	1403	Ciechowski, John Joseph	1, 500
Frederic R. Kellogg	1754	Carlsen, John	1, 500
"	"	Hamilton, Albert Myron (Johnson, Samuel L.)	2, 100
"	"	Kramer, James	1, 875
"	"	Jorgensen, Axel Albert	1, 500
"	"	Souza (Souza or Souga) Francisco de	1, 500
J. L. Luckenbach	250	Saunders, Drew B. (injury)	2, 250
Kansan	8	Aguirre, Florentino	1, 500
"	"	Hanan Charlie	1, 500
"	"	Kua, Alexander P.	1, 500
"	"	Murphy, Jeremiah M.	2, 700
Barge "Lansford"	4819	Ainsleigh, Charles (injury)	958. 33

Vessel	Policy No. S. I.	Name of insured	Amount of claim paid by U. S. A
Lewis Luckenbach	223	Anderssan (Anderson), Len- nart.	\$1, 500
" "	"	Erickson, John	1, 950
" "	"	Hassell, George Benjamin	1, 500
" "	"	McCants, L. S.	2, 310
" "	"	Nissenson, Irving J.	1, 500
" "	"	Peterson, Wallace	1, 500
" "	"	Watkins, J. B.	4, 500
Motano	51	Gilow, Edward	1, 500
" "	"	Gleason, Lannie	1, 500
" "	"	Gregory, Harry	1, 500
" "	"	Harwood, W.	1, 500
" "	"	Haugaard, Julius C.	1, 980
42 "	"	Larsen, Karl	1, 500
" "	"	Lohse, Renaldo R.	2, 250
" "	"	Lundquist, Karl David	1, 500
" "	"	Madsen, Marius Michael	1, 500
" "	"	Nordgren, John Isidor	1, 500
" "	"	Roslund, Walter	1, 500
" "	"	Thorne, Vernon S.	1, 500
" "	"	Tuber, Robert	1, 500
" "	"	Williams, Rubin	1, 500
" "	"	Williams, Russell A.	1, 500
" "	"	Winter, Joseph	1, 500
O. B. Jennings	1925	Bastin, Rene (dentention)	908, 14
" "	"	Scott, James Henry	1, 500
Owasco	503	Garcia, Jesus	1, 500
" "	"	Jacobsen, Albert	1, 500
" "	"	Watts, Nathan R. (injury)	972
Platuria	310	Eseriche, Alberto Jarque (Gar- cie, Alberto).	1, 500
" "	"	Halpern, L.	1, 500
" "	"	Hellstrom, Gustav F. (injury)	1, 500
" "	"	Jones, James	1, 620
" "	"	Leslie, John	4, 050
" "	"	Whittier, Harold W.	1, 500
Rochester	567	Ampuero, Antonio Avendano	1, 500
" "	"	Bulgarea, George	750
" "	"	Diaz, Augustin Manriquez	1, 500
" "	"	Einset, Christian	2, 500
" "	"	Gonzales, Juan	1, 500
" "	"	Helm, Verner L.	1, 500
" "	"	Hellstrom, Nils Ragnar Os- sian (B).	1, 500
" "	"	Hinman, William B.	1, 500
" "	"	Kokeritz, Erik	5, 000
" "	"	Madsen, Thor	1, 500
" "	"	Margeli, Benjamin	1, 500
" "	"	Ohman, Ernest	1, 500
" "	"	Petersen, Axel	1, 500
" "	"	Wheeler, Rex S.	1, 500
San Saba	2783	Annoni, Natali	1, 500
" "	"	Birdsall, Bergen G.	3, 600
" "	"	Chambers, Esau Emanuel	1, 500
" "	"	Cobb, Harry	2, 175
" "	"	Cyntje Juancito Assencion (Cynthe, Juaneto).	1, 500
" "	"	Domingo, Legideus Maria (Rosal, Theodore).	1, 500
" "	"	Downie, John L.	1, 500
43 " "	"	Henrique, Theofil Confesor (Henriquez, Philip).	1, 500

Vessel	Policy No. S. I.	Name of insured	Amount of claim paid by U. S. A.
San Saba	2783	Henriquez, Pol (Pel)	\$1, 500
" "	"	Lange, Pablo De	1, 500
" "	"	Lapiento, Don Domingo	1, 500
" "	"	Lazcano, Rosamel	1, 500
" "	"	Longuerio, Manuel	1, 500
" "	"	Lorenzo, Angel	1, 500
" "	"	McBride, William J	2, 550
" "	"	Maceiva, Jose M	1, 500
" "	"	Miller, Frank	1, 950
" "	"	Mothersill (Manning), Stephen	1, 500
" "	"	Mosquirra, Manuel	1, 500
" "	"	Peterson, Pablo	1, 500
" "	"	Quintans, Manuel Nolla (Noya)	1, 500
" "	"	Ray, Arthur	1, 500
" "	"	Richards, Ralph	1, 725
" "	"	Robinson, Joseph	1, 500
" "	"	Terkelsen, Harry (Bjorn)	1, 500
" "	"	Villanueva, Julio Sesar	1, 500
" "	"	Werners, George	1, 500
" "	"	West, Fred	1, 500
St. Helens	603	Bodin, Viktor Leonard	1, 500
" "	"	Carroll, Bridges	1, 500
" "	"	Dahlberg, Peter	1, 500
" "	"	Danielson, Theodor	1, 500
" "	"	Ferreira, Antonio	1, 500
" "	"	Freris, Joseph (Freyer, James)	1, 500
" "	"	Golden, Frank	1, 500
" "	"	Gudmundsen, Gudmund	1, 500
" "	"	Head, Richard James	1, 500
" "	"	Jakobsson, J. A	1, 500
St. Helens	603	Jennings John Wilberforce	1, 500
" "	"	Johnson, Bernt	1, 500
" "	"	Johnson, B. F	1, 500
" "	"	Johnson, Hugh Marcus	1, 500
" "	"	Lopez, Jose (Joaa) Miguel	1, 500
" "	"	Maguregui, Victoriano	1, 500
" "	"	Mayoral, Pedro Alvaro Lopez	1, 500
" "	"	Movilla, Jose M	1, 500
" "	"	Nutt, Joseph	1, 500
" "	"	Ochando, Ramon N	1, 500
" "	"	Rocosa, Ramon Rocosa Y	1, 500
" "	"	Saunders, William Henry	1, 971
44 Tyler	1088	Carro, Gregorio	1, 500
" "	"	Kawamoto, Fukumatsu	1, 500
" "	"	Knowlton, Clarence	1, 500
" "	"	Mears, E. W	2, 280
" "	"	Morera, Jose Rodriguez	1, 500
" "	"	Posse, Fernando	1, 500
Total			272, 067. 81

In United States District Court

Motion to strike portions of answer. Filed May 24, 1933

Now comes the complainant and moves the court to strike separately and severally subparagraphs eleven (11) to twenty-five (25), both inclusive, of Paragraph III, and/or strike collectively all of

said subparagraphs from defendants' separate and several answers, and for reasons therefor states:

1. That each subparagraph separately and all said subparagraphs together, if true, constitute no cause of action against complainant nor ground of defense, set-off, or counterclaim to complainant's petition, in law or in equity or under the act of Congress known as "trading with the enemy act."

2. That each subparagraph separately and all said subparagraphs together are redundant and/or impertinent in that said matter is irrelevant, immaterial, and unnecessary and injected into this case to confuse the issues and delay the cause.

3. That each subparagraph separately and all said subparagraphs together are *res inter alios acta*, in that the United States of America and the German Government are not parties to this suit, nor are they necessary or proper parties to same, and/or in that the debit and credit relations between said Governments are not in any way involved in this suit, which is based on the "trading with the enemy act."

45 4. Defendants are not authorized, nor entitled, in law or in equity or under the "trading with enemy act," to make such defense or defenses, nor claim any rights for the United States, nor set up any claims against the German Government.

II

Complainant also moves the court to strike separately and severally subparagraphs twenty-six (26) to thirty-one (31), both inclusive, of paragraph IV, and/or collectively all of said subparagraphs, from defendants' separate and several answers and for reasons therefor states:

1. That each subparagraph separately and all said subparagraphs together, if true, constitute no cause of action against complainant nor ground of defense, set-off, or counterclaim to complainant's petition, in law or in equity or under the act of Congress known as "trading with the enemy act."

2. That each subparagraph separately and all said subparagraphs together are redundant and/or impertinent in that said matter is irrelevant, immaterial, and unnecessary and injected into this case to confuse the issues and delay the cause.

3. That each subparagraph separately and all said subparagraphs together are *res inter alios acta*, in that the United States of America and the German Government are not parties to this suit, nor are they necessary or proper parties to same, and/or in that the debit and credit relations between said Government are not in any way involved in this suit, which is based on the "trading with the enemy act."

4. Defendants are not authorized, nor entitled, in law or in equity or under the "trading with the enemy act," to make such
46 defense or defenses, nor claim any rights for the United States, nor set up any claims against the German Government.

III

Complainant also moves the court to strike separately and severally subparagraphs thirty-two (32) to forty-two (42), both inclusive, of Paragraph V, and/or collectively all of said subparagraphs, from defendants' separate and several answers, and for reasons therefor states:

1. That each subparagraph separately and all said subparagraphs together, if true, constitute no cause of action against complainant nor ground of defense, set-off, or counterclaim to complainant's petition, in law or in equity or under the act of Congress known as "trading with the enemy act."

2. That each subparagraph separately and all said subparagraphs together are redundant and/or impertinent in that said matter is irrelevant, immaterial, and unnecessary and injected into this case to confuse the issues and delay the cause.

3. That each subparagraph separately and all said subparagraphs together are *res inter alios acta*, in that the United States of America and the German Government are not parties to this suit, nor are they necessary or proper parties to same, and/or in that the debit and credit relations between said Governments are not in any way involved in this suit, which is based on the "trading with the enemy act."

4. Defendants are not authorized, nor entitled, in law or equity or under the "trading with enemy act," to make such defense or defenses, nor claim any rights for the United States, nor set up any claims against the German Government.

47

IV

Complainant also moves to strike the following matter from the prayer of the separate and several answers of defendants:

"That this court adjudge and decree that the United States of America is entitled to obtain any and all moneys now in possession of the Alien Property Custodian and in the Treasury of the United States, which is now held in the name of the Imperial German Government to be applied on the debt due by Germany to the United States of America,"

and for reasons therefor states:

1. That said paragraph constitutes no cause of action against complainant nor ground of defense, set-off or counterclaim to complainant's petition, in law or in equity or under the act of Congress known as "trading with the enemy act."

2. That said paragraph is redundant and/or impertinent in that said matter is irrelevant, immaterial, and unnecessary, and injected into this case to confuse the issues and delay the cause.

3. That said paragraph is *res inter alios acta*, in that the United States of America and the German Government are not parties to

this suit, nor are they necessary or proper parties to same, and/or in that the debit and credit relations between said Governments are not in any way involved in this suit, which is based on the "trading with the enemy act."

4. That defendants are not authorized, nor entitled, in law or in equity or under the "trading with the enemy act," to make such defense or defenses, nor claim any right for the United States, nor set up any claims against the German Government.

48 5. That it appears from defendants' separate and several answers that defendants are not entitled to the relief prayed for in said paragraph.

Wherefore, complainant prays that each said subparagraph separately and all of said subparagraphs together, and said prayer in defendants' separate and several answers be stricken out.

(Sgd.)

S. W. FORDYCE,

"

JOHN H. HOLLIDAY,

"

THOMAS W. WHITE,

Solicitors for Complainant.

In United States District Court

Opinion on order overruling motion to dismiss and sustaining motion to strike. March 3, 1924

[Title omitted.]

FARIS, J.: This case was before me on a demurrer to the petition filed by the defendants, and on a motion by the plaintiff to strike out certain portions of the defendants' answer, the motion to dismiss having been contained in the answer of defendants, and as a part thereof. This condition renders the situation somewhat anomalous as a matter of procedure, but since counsel on both sides saw fit to bring it up and present it in that way, no occasion arises for the court to refuse to consider it as counsel, respectively, desire it to be considered.

Plaintiff began an action against defendants, Miller and
49 White, who are, respectively, Alien Property Custodian and Treasurer of the United States, under the provisions of section 9 of the so-called trading with the enemy act as amended by the act of March 4, 1923. This section, so far as is pertinent to the situation presented by the pleadings, and by the motions mentioned, reads as follows:

"Any person not an enemy or ally of enemy claiming any interest, right, or title in any money or other property which may have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States, or to whom any debt may be owing from an enemy or ally of enemy whose property or any part thereof shall have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder

and held by him or by the Treasurer of the United States may file with the said custodian a notice of his claim under oath and in such form and containing such particulars as the said custodian shall require; and the President, if application is made therefor by the claimant, may order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States, or of the interest therein to which the President shall determine said claimant is entitled; provided, that no such order by the President shall bar any person from the prosecution of any suit at law or in equity against the claimant to establish any right, title, or interest which he may have in such money or other property. If the President shall not so order within sixty days after the filing of such application or if the claimant shall have filed the notice as above required and shall have made no application to the President, said claimant may institute a suit in equity in the Supreme Court of the District of Columbia in the District Court of the United States for the district in which such claimant resides, or, if a corporation, where it has its principal place of business (to which suit the Alien Property Custodian or the Treasurer of the United States, as the case may be, shall be made a party defendant), to establish the interest, right, title, or debt so claimed, and if so established the court shall order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States or the interest therein, to which the court shall determine said claimant is entitled. If suit shall be so instituted, then such money or property shall be retained in the custody of the Alien Property Custodian, or in the Treasury of the United States, as provided in this act, and until any final judgment or decree which shall be entered in favor of the claimant shall be fully satisfied by payment or conveyance, transfer, assignment, or delivery by the defendant, or by the Alien Property Custodian, or Treasurer of the United States on order of the court, or until the final judgment or decree shall be entered against the claimant or suit otherwise terminated."

The alleged debt for which plaintiff sues is against the former Imperial German Government. The indebtedness of the former Imperial German Government to the plaintiff herein accrued by reason of plaintiff's purchase and present ownership of ten thousand dollars in value of the six per cent Treasury notes of said Imperial German Government, bearing date the first day of April, 1916, and payable on the first day of April, 1917. I believe the date of payment was afterwards by agreement extended, but that fact, if it be a fact, cuts no figure whatever in the law of the case, as the case is now presented to the court. As stated, defendants come and move to dismiss the bill of complaint on divers grounds. Those which seem pertinent and debatable are:

(a) That the Imperial German Government is a necessary party defendant and that it has not been made a party to this action.

(b) That this court has no jurisdiction to pass upon claims against the Imperial German Government.

(c) That there is no equity in the bill; and

(d) That under the treaty of peace between Germany and the United States, the moneys in the hands of the Alien Property Custodian have become absolutely vested in the United States, and that the latter is the owner of such funds.

Taking the last point first: This contention is divided into two propositions, one of which the above statement of the point does not express; for, not only is it urged that the United States may retain this money, concededly in the hands of the defendants, in order to recoup itself for divers losses sustained by them in the war, but it is also contended that defendants hold this money in order to pay (under the provisions of the treaty of peace, made with Germany on the twenty-fifth day of August, 1921) all persons, being citizens of the United States who have suffered damages and injuries to person and property at the hands of the Imperial German Government.

The first position is, I think, untenable, because the trading with the enemy act nowhere provides that the moneys coming into the hands of the defendants constitute a fund for the payment of claims of, or debts due to, the United States. If it be contended on this point, as it is, in a supplemental brief filed by the defendants, that the United States, under the terms of section 9 is such a party as is mentioned by that section, and such a party as may take advantage of the provisions thereof, the answer is, that if that be a fact, no such action has been taken by the United States, and no such suit has been brought by it, so the matter, for these very simple reasons, is not before the court.

It is further contended in the brief which I have mentioned that the defendants here, since they are officers of the United States, have the right themselves to raise this question for the United States. I do not think this position is correct. They are certainly not the United States, but mere officers thereof, and are not even connected with the Department of Justice. So I think there can be no validity in the contention made, either that the United States has a right to hold this money because it might become a claimant under section 9, in the light of the fact that it has not become such a claimant.

As forecast, neither of the defendants here is vested by law with any authority to represent the United States in legal matters. For these two reasons, I am of the opinion that there is nothing in the contention last made in the final brief of defendants.

Coming back now to section 9: I think it is fairly well settled that the United States had the right to confiscate the property of the Imperial German Government, as also the property of nationals of that Government in time of war. (Miller vs. United States, 11 Wall., 259.) Having so confiscated this property, absent a statute,

the property so confiscated would have become the property of the United States, to be used by the latter in such wise as might be determined by the United States.

By section 9 of the act it was enacted, however, that the money accruing from such confiscations might be used in paying debts due by the Imperial German Government to loyal citizens of the United States. It is then, obviously, only upon the theory that the United States is a person, within the meaning of section 9 of the act, that such a view can stand for a minute. I think this is so obviously erroneous, as I have already briefly attempted to point out, that the matter needs no further exposition. At any rate, it is not a matter having weight in a motion to dismiss. If in fact the United States is such a person, which might under the provisions of section 9 file its claim with the defendants, or bring suit against the defendants, this would not affect the right of plaintiff to bring this action, whatever the effect might be as to prorating the funds held, should they prove inadequate to pay both plaintiff and the United States in full.

Again, this fund was, absent section 9, the property of the United States for any use to which the United States wished to devote it. The very fact that this section was enacted proves that the word "person" in the act does not include the United States.

Coming to the other [phrase] of the question, which is, that the treaty between the United States and Germany provided for the use of this fund in the paying of injuries and damages to the persons or property of citizens of the United States, and that since, concededly, the debt of plaintiff accrues from neither a damage nor an injury, it may not be paid therefrom. This contention overlooks some very pertinent language of this treaty. While it is provided, as contended by the defendants, there is a condition precedent in this treaty. That condition is, that property in the hands of the Alien Property Custodian shall be used as contended by defendants, except in so far as "shall have been heretofore, or specifically hereafter shall be, provided by law." Moreover, section 9 was amended on the fourth day of March, 1923, and all those provisions on which plaintiff now relies were reenacted; thereafter, on March 23, 1923, this action was begun.

Touching the contention that the Imperial German Government is a necessary party to this action, little need be said. If this contention is well taken, the statute under discussion is worthless, and the case is at an end. This is so because, absent voluntary entry of appearance, the German Government can not be made a party and brought into court. So, also, if the German Government is an absolutely necessary party, this court has no jurisdiction of the case. This is so, not only for the reason already set out, but for another reason, which is a corollary of that mentioned, and this reason is that matters of debts due from a friendly sovereign power to citizens of another power are not collectible through the courts of the power whereof the creditor is a citizen.

But the matter is not one of garnishment. So far as I know, neither the United States nor an officer thereof is subject to garnishment. The case presented is simply one wherein the United States seized and confiscated the money and property of an enemy and of the nationals of that enemy, as it had the right to do. (*Miller vs. United States*, supra), and thereupon, instead of devoting such confiscated property to the use of the United States, as it likewise had the right and power to do, nevertheless, saw fit to pass a statute by the terms whereof such confiscated property was made a fund to which creditors of the Imperial German Government, being loyal citizens of the United States, could resort for the payment of money honestly due such citizens.

Section 9 also provides remedies for divers other claimants and situations. It seems that not only may a creditor of the Imperial German Government seek payment from this fund, but adverse claims to a seized fund, questions as to actual ownership by an alien enemy of a given seized fund, specific property, questions of fact as to alienship of owner, and others, are all provided for. In this situation it is not surprising that there are to be found cases wherein it has been ruled that an alien enemy, even in time of war, is entitled to his day in court. Of this class is the case of 55 *Watts vs. Unione Austriaca*, etc., 248 U. S. 9, and many other cases which involve litigation between individual citizens and individual enemy aliens, as to the ownership of property, or as to debts due the citizens from such aliens, where, antecedently, no seizure of such disputed property, or of such debt, has been made by the Alien Property Custodian for and in behalf of the United States, as has been done in the instant case.

Plaintiff here has followed in its complaint all of the substantial provisions of section 9, supra, and has by its pleading brought itself fairly within the provisions of this section. Whether it shall be able by its proof to make out the case pleaded is not before me, and does not now concern me.

No attack is made on the constitutional validity of said section 9. This question not having been raised, is not before me. If the property now in the hands of the defendants is yet the property of enemy aliens; if it has not by confiscation become the property of the United States, it might be doubtful if the defendants, having no interest in it on this theory, could raise any constitutional question. But I am not required to rule this point, and, be this as may be, since the Constitution has been in no wise invoked, it is herein in no wise ruled on.

If, then, section 9 means what it says, I see no reason why plaintiff is not, on the facts averred, entitled to sue under its provisions. Whether Congress intended to do what it seems to have done in enacting this section, and whether it ought to have done what it thus seems to have done, are wholly afield from the proposition now confronting me.

I conclude that the motion of defendants to dismiss the bill of complaint ought to be overruled, and so it is ordered. As stated, defendants' answer includes a motion to dismiss, as well as an answer, both embodied in a single pleading. No point is made of this by plaintiff, so I make none here. It is even probable that no point could be made of this situation.

As already stated, with the motion of defendants to dismiss the bill of complaint, was submitted a motion by plaintiff to strike out from defendants' answer subdivisions 11 to 25, inclusive, of Paragraph III; subdivisions 26 to 31, inclusive, of Paragraph IV; subdivisions 32 to 42, inclusive, of Paragraph V; and all that part of said answer which prayed this court to find and decree that the United States have judgment for the amounts due to it by reason of the facts alleged in said Paragraphs III, IV, and V of such answer.

From what is said above in these hastily prepared remarks, as well as for other reasons, which are wholly obvious, this motion to strike out ought to be sustained, and so it will be ordered.

These same orders, for the same reasons, will be entered in cases numbered 6335, 6336, 6337, and 6338. In the four cases last mentioned the motions to dismiss the bill of complaint will be overruled, and the motion of plaintiff to strike out certain parts of the answer of defendants, will be sustained.

St. Louis, Missouri, *March 3, 1924.*

United States District Court

Order overruling motion to dismiss and sustaining motion to strike.
March 3, 1924

Now on this day, the court having considered the motion of defendants to dismiss the bill of complaint herein, being fully advised in the premises, doth order that said motion to dismiss be and the same is hereby overruled. (Oral opinion.)

And the court having considered the motion of plaintiff to strike out certain parts of the answer of defendants, being fully advised in the premises, doth order that said motion of plaintiff be, and the same is hereby, sustained. (Oral opinion.)

In United States District Court

Amended answer. Filed Mar. 24, 1924

Now come the defendants, Thomas W. Miller, as Alien Property Custodian, and Frank White, as Treasurer of the United States, by leave of court heretofore obtained, and without waiving any of their rights under their motion to dismiss the bill of complaint therein, and file their separate and several amended answer to the bill of complaint, and say:

(1) These defendants admit the averments of paragraph numbered 1 of the bill of complaint;

(2) These defendants admit the averments of paragraph numbered 2 of the bill of complaint;

(3) That the allegations of paragraph numbered 3 of the bill of complaint are immaterial and irrelevant for the purposes of this suit, and these defendants should not be required to answer the same;

(4) They admit the averments of paragraph numbered 4 of the bill of complaint;

(5) They admit the averments of paragraph numbered 5 of the bill of complaint;

(6) They have no knowledge or information sufficient to form a belief with respect to the averments of paragraph numbered 6 of the bill of complaint, and therefore demand strict proof thereof;

58 (7) They have no knowledge or information sufficient to form a belief with respect to the averments of paragraph numbered 7 of the bill of complaint, and therefore demand strict proof thereof;

(8) They have no knowledge or information sufficient to form a belief with respect to the averments of paragraph numbered 8 of the bill of complaint, and therefore demand strict proof thereof;

(9) They have no knowledge or information sufficient to form a belief with respect to the averments of paragraph numbered 9 of the bill of complaint, and therefore demand strict proof thereof;

(10) They admit the averments of paragraph numbered 10 of the bill of complaint.

Wherefore these defendants pray that the bill of complaint be dismissed with costs.

(Sgd.) THOMAS W. MILLER,
Alien Property Custodian.
 (Sgd.) FRANK WHITE,
Treasurer of the United States.

United States Attorney.

[*Duly sworn to by Thomas W. Miller and Frank White; jurats omitted in printing.*]

R. A. HUBER, called as a witness on behalf of the plaintiffs, being duly sworn, testified as follows:

My name is R. A. Huber. I live in St. Louis. I am vice president and treasurer of the Anheuser-Busch Company, in addition to which I handled the personal financial affairs of Mrs. Lilly Busch and Mr. August A. Busch.

At this point the witness was shown what purported to be two notes of the Imperial German Empire, which notes each bore the

marking "Series 26," and were numbered "Lit. X No. 20 and No. 21."

60 The witness continuing, testified as follows:

These notes are each of the amount of \$50,000. Mr. Busch still owns these notes.

At this point the witness was shown what purported to be certain notes of the German Empire, all being Series 26, Lit. X. The notes in number and amount were as follows:

Nos. 22 to 26, both inclusive, for \$50,000 each.

Nos. 66 and 67, for \$25,000 each.

Nos. 197 to 206, both inclusive, for \$10,000 each.

The witness further testified that each bore the endorsement "in consideration of payment to the undersigned holder of this note of \$----- interest at the rate of 6% per annum from April 1, 1917, to April 1, 1918, the receipt whereof is hereby acknowledged, the payment and maturity of this Treasury note is hereby extended to April 1, 1918," the blank for dollars being filled in with the interest payment in each case. The same endorsement appeared on the notes owned by Mr. August A. Busch. When these notes were purchased they bore 6% interest and they were renewed at 6%.

Upon cross-examination the witness testified as follows:

Prior to October 6, 1917, I was financial agent for Lilly Busch and August A. Busch, the same as I am to-day. I was present when the notes referred to were purchased and issued the check for payment of them. They were delivered into my possession and remained in my possession until the present litigation took place. The notes were received from Chandler & Company, a firm of bankers in New York and Philadelphia. They were purchased in St. Louis through representatives of Chandler & Company. Mr. August
61 A. Busch signed the check for their purchase as attorney in fact for Mrs. Lilly Busch, but the money came from her funds. These notes have never been sold or delivered to anyone else since October 6, 1917.

SAMUEL A. MITCHELL, called as a witness on behalf of the plaintiffs, being duly sworn, testifies as follows:

My name [of] Samuel A. Mitchell. I am a lawyer and am counsel for the Mercantile Trust Company. I held this position during the year 1916. I am familiar with the notes produced by the Mercantile Trust Company known as the notes of the Imperial German Government.

At this point the witness was shown what purported to be two treasury notes of the Imperial German Government for \$50,000 each, due April 1, 1917, numbered Series 26 Lit. X NR 27 and NR 28.

The witness further testified that there was an endorsement on each of the notes of \$3,000 interest from April 1, 1917, to April 1, 1918, this being interest at the rate of 6%, which is the rate borne by these notes. The Mercantile Trust Company owned these notes prior to October 6, 1917, and has owned them ever since and owns them now.

Upon cross-examination the witness testified as follows:

I was present when the notes mentioned above were purchased. At the time of their purchase I was general counsel of the Mercantile Trust Company, and I know that these notes have always been owned by the Mercantile Trust Company, both equitably and legally, since their purchase. The notes are an investment of the company.

EDGAR L. TAYLOR, called as a witness on behalf of the plaintiffs, being duly sworn, testified as follows:

My name is Edgar L. Taylor. I am vice president of the
62 Boatman's Bank and was vice president of the Boatmen's Bank during the year 1916. The witness was shown what purported to be notes of the Imperial German Government, said notes being numbered Series 26 Lit. X. Nos. 416 to 427, both inclusive, each for \$1,000.

The witness further testified that these notes are the property of the Boatmen's Bank, and that on the reverse side of each note is the endorsement "in consideration of the payment to the undersigned holder of this note of \$60 interest at the rate of 6% per annum from April 1, 1917, to April 1, 1918, the receipt whereof is hereby acknowledged, payment and maturity of this treasury note is hereby extended to April, 1918." The notes bear interest at the rate of 6% and are passed due and unpaid.

Upon cross-examination the witness testified as follows:

I was in the bank when these notes were purchased. I am an officer of the bank and I knew of their purchase. The source of my information as to their purchase was the bill of Stifel, Nicolaus & Parsons Company, from whom or through whom the notes were purchased and the check issued to the concern in payment. I do not recall whether I signed the check or not, nor do I recall whether I saw the check. The bill for the notes was presented to the bank. The bill was received about the first of June, 1916. I do not recall exactly when I first saw the notes. I have seen them in the assets of the bank, however, since June, 1916. I know they were in the assets of the bank because they were listed in our securities as belonging to the bank. I have seen the list of securities. The bill that the bank received and the list of the securities of the assets of the bank are the only source of my information that these notes were owned by the bank prior to October 6, 1917. I can produce the check we issued in payment of them. I knew nothing more than that as to the ownership of the notes prior to October 6, 1917. These
63 notes are in the bank's bond and stock account as a part of the bank's invested funds. They were not purchased for anyone else. As far as I know, they have never gone from the possession of the bank.

CHARLES MAULL, called as a witness on behalf of the plaintiffs, being duly sworn, testified as follows:

My name is Charles Maull. I am president of the Northwestern Trust Company.

The witness was shown a treasury note of the German Empire for \$10,000, numbered Series 26, Lit. X No. 214.

The witness further testified that this note belonged to the Northwestern Trust Company prior to October 6, 1917, and that it has belonged to the Trust Company ever since. The note has not been paid. There was a payment of interest on May 21, 1920, of \$323.33. The note is endorsed "in consideration of the payment to the undersigned holder of this note of \$600 interest, at the rate of 6% per annum from April 1, 1917, to April 1, 1918." The rate of interest on the notes is 6%.

Upon cross-examination the witness testified as follows:

Prior to 1917 I was chairman of the executive committee of the Northwestern Trust Company. The above-mentioned note was bought for investment by the Trust Company. I signed the order for its purchase. I did not see the note. I did not sign the check for the payment of the note. I did not see the note individually. I saw it listed in our investment account. The note was purchased for the assets of the Trust Company. The Trust Company has never negotiated nor sold the note to anyone since.

64 SAMUEL A. MITCHELL, being recalled, testified on behalf of the plaintiffs as follows:

Neither of the notes concerning which I testified has been paid. They are overdue and unpaid.

R. A. HUBER, being recalled, testified on behalf of the plaintiffs as follows:

With reference to the notes owned by Mrs. Lilly Busch and Mr. August A. Busch, I will state that they are passed due and unpaid.

Over the objection and exception of the defendants, the plaintiffs were permitted to introduce into evidence the motions to dismiss and original answers filed by the defendants in the causes. The motions to dismiss and original answers of the defendants in each of the five cases were taken as introduced into evidence and were marked "Plaintiffs' Exhibits 1, 1-a, 1-b, 1-c, 1-d, respectively, and are in words and figures as follows, to wit:

[Exhibit 1 to testimony of R. A. Huber omitted. Printed side page 8 and 9, ante.]

[Exhibits A, B, C, and D to testimony of R. A. Huber omitted. See Exhibit "A" printed side page 21, ante.]

101 MEMO RE PLAINTIFFS' EXHIBITS 1-A, 1-B, 1-C, AND 1-D

NOTE.—Plaintiffs' Exhibits 1-a, 1-b, 1-c, and 1-d being separate motions to dismiss and separate answers in cases numbered 6334, 6335, 6337, and 6338, are the same as plaintiffs' Exhibit 1, except the names and amounts.

Over the objection and exception of the defendants there was admitted into evidence certain stipulations dated July 2, 1923. These stipulations were marked, respectively, "Plaintiffs' Exhibits 2, 2-a, 2-b, 2-c, and 2-d," and were in words and figures as follows (Plaintiffs' Exhibit 2):

PLAINTIFFS' EXHIBIT 2 TO TESTIMONY OF R. A. HUBER

STIPULATION

In the District Court of the United States for the Eastern District
of Missouri. Eastern Division

MERCANTILE TRUST COMPANY, A CORPORATION, PLAINTIFF
VS.

THOMAS W. MILLER, AS ALIEN PROPERTY CUSTODIAN, AND FRANK
White, as Treasurer of the United States, defendants

It is hereby stipulated and agreed by and between attorneys for
the respective parties to the above-entitled cause, as follows,
to wit:

102 (a) That as alleged in paragraph 21 of the answer of the
defendants filed herein, the United States of America expended and laid out in the maintenance of its military forces occupying certain territory of Germany subsequent to November 11, 1918, the sum of two hundred and fifty-five million, five hundred and twenty-five thousand, two hundred and ninety-eight dollars and forty-five cents (\$255,525,298.45).

(b) That, as alleged in paragraph 27 of the answer of the defendants filed herein, the United States of America between April 6, 1917, and July 2, 1921, requisitioned and seized and chartered certain vessels as described in said answer, and that subsequent to the seizure thereof and during said period, said vessels were damaged, and/or destroyed by Germany in the amount of fifty million, one hundred and forty-nine thousand, two hundred and sixty-five dollars and ninety-seven cents (\$50,149,265.97).

(c) That, as alleged in paragraph 28 of the answer of the defendants filed herein, the United States of America between the 6th day of April, 1917, and the 2nd day of July, 1921, owned certain vessels referred to in said answer which were destroyed by Germany in the amount of twelve million, one hundred and forty-four thousand, ninety-five dollars and twenty-seven cents (\$12,144,095.27).

(d) That, as alleged in paragraph 33 of the answer of the defendants filed herein, the United States of America issued certain policies of insurance upon certain vessels and their cargoes as described in said answer and that as alleged in paragraphs 35, 37, and 39, said vessels and their cargoes were destroyed by Germany and that policies of insurance upon the lives of various persons and vessels as set forth in said answer, were paid by the United States of America in the amount of twenty-nine million, three hundred and four thousand, five hundred and fifty-two dollars and eighty-five cents (\$29,304,552.85).

103 (3) That the letter of Doctor Karl von Lewinski to S.
W. Fordyce, dated June 13, 1923, attached hereto and made a part of this stipulation, shall be admitted to be the law of Germany with respect to the matters set forth in said letter, and that said letter may be considered as evidence in this case.

And whereas the defendants have filed herein a motion to dismiss the bill of complaint, claiming that the Imperial German Government, and/or its successor or successors, has an interest in the subject matter of this suit and has not been made a party thereto, and that it does not appear from the allegations of the bill that the Imperial German Government, and/or its successor or successors, has consented that this court shall have jurisdiction in this proceeding, and

Whereas, the parties hereto desire to expedite the determination of the issues pending herein and to induce Germany voluntarily to enter its appearance as a defendant herein.

It is further stipulated and agreed by and between the attorneys for the respective parties to the above-entitled cause; and for the reasonable and proper protection of Germany, as follows, to wit:

1. The complainant forthwith will amend its bill of complaint by making Germany a party defendant herein.

2. In the event Germany voluntarily enters its appearance as a defendant, or jurisdiction of Germany as a defendant is obtained by due process of law, neither the complainant nor either of the defendants will assert in this cause and claim or demand against Germany except as follows:

104 (a) The only relief to be sought by the complainant against Germany is that Germany shall by its answer to be herein filed, and its liability to the complainant for the amount of complainant's claim and consent that the funds referred to in paragraph 8 of the bill of complaint and paragraph 8 of the answer may be subjected to the payment of complainant's claim, as may be decreed by the court herein.

(b) These defendants will not seek to use the allegations set forth in the several separate defenses to the bill of complaint, except as a basis for establishing as a defense to this suit the claims of the United States of America, therein set forth against Germany and the right of the United States of America to retain possession of the funds referred to in paragraph 8 of the bill of complaint for the purpose of applying them to the payment of the said claims of the United States of America against Germany unless Germany shall hereafter otherwise satisfy said claims. These defendants will not insist upon any affirmative money judgment or decree against Germany, but will insist only upon such judgment and decree as will fully protect and secure the moneys of Germany now in the possession of the Treasurer of the United States of America from depletion, and as will permit the United States of America to retain in its possession such money unimpaired for the purpose of satisfying its said claims against Germany.

This stipulation is entered into by and between Samuel W. Fordyce, Esq., attorney for the Mercantile Trust Company, a Corporation, plaintiff herein, and Allen Curry, Esq., United States Attorney, attorney for Thomas W. Miller, as Alien Property Custodian, and Frank White, as Treasurer of the United States, and should the Imperial German Government be made a party to this

suit this stipulation is not to be binding upon it in any particular.

105 Dated the 2nd day of July, 1923.

(Signed) SAMUEL W. FORDYCE,
Attorney for the Plaintiff.

(Signed) ALLEN CURRY,
*United States Attorney,
Attorney for Thomas W. Miller, as Alien Property Custodian,
and Frank White, as Treasurer of United States.*

MEMO RE PLAINTIFF'S EXHIBITS 2-A, 2-B, 2-C, AND 2-D

NOTE.—Plaintiff's Exhibits 2-a, 2-b, 2-c, and 2-d, being separate stipulations in cases numbered 6335, 6336, 6337, and 6338, are the same as plaintiff's Exhibit No. 2 except the names of the parties. Over the objection and exception of the defendants there was admitted into evidence a brief filed by the defendants in opposition to the motions of the plaintiffs to strike out the affirmative defenses in the original answers of the defendants. This brief was marked plaintiff's Exhibit 3, and is in words and figures as follows, to wit:

Plaintiff's Exhibit 3 to testimony of R. A. Huber

In the District Court of the United States for the Eastern District of Missouri

LILLY BUSCH

v.

THOMAS W. MILLER, AS ALIEN PROPERTY CUSTODIAN, AND FRANK
White, as Treasurer of the United States.

NORTHWESTERN TRUST CO., A CORPORATION,

v.

SAME.

AUGUST A. BUSCH

v.

SAME.

NORTHWESTERN TRUST CO., A CORPORATION,

v.

SAME.

MERCANTILE TRUST COMPANY, A CORPORATION,

v.

SAME.

BRIEF ON BEHALF OF THOMAS W. MILLER, AS ALIEN PROPERTY CUSTODIAN,
AND FRANK WHITE, AS TREASURER OF THE UNITED STATES, IN OPPOSITION
TO THE MOTION TO STRIKE CERTAIN PORTIONS OF THE ANSWERS
FILED IN THE CASES

The facts

The motions to strike filed by the plaintiffs in these cases are directed specifically to paragraphs 11 to 42 of the answers. These

paragraphs compose the three separate and several defenses set up in opposition to the recovery of the plaintiffs in these suits.

The court's attention is directed to the jurisdictional allegations and allegations of general fact contained in paragraphs 11 to 20 of the answers of the defendants.

Substantially, the defenses set up in the separate and several defenses are, first, the fact that Germany is indebted to the United States, first, in the sum of two hundred fifty-five million five hundred twenty-five thousand two hundred ninety-eight dollars and forty-five cents (\$255,525,298.45) expended by the United States in the maintenance of the military forces of the United States upon German territory. It is alleged that accounts have been stated between Germany and the United States for these amounts, such statement having been made by the Reparation Commission created by that portion of the treaty of Versailles which was included in the treaty between the United States and Germany, that Germany

being indebted to the United States, undertook and promised
107 to pay that sum to the United States, and that Germany has not paid the said sum nor any part thereof, and it remains due and owing to the United States; second, that between the 6th day of April, 1917, and the 2nd day of July, 1921, the United States requisitioned, seized, and chartered certain vessels belonging to various persons, which vessels were, during the said period, damaged and destroyed by Germany by reason of which destruction and damage the United States sustained damages in the sum of more than fifty million one hundred forty-nine thousand two hundred sixty-five dollars and ninety-seven cents (\$50,149,265.97) and that prior to the commencement of this suit Germany agreed to pay to the United States for such damages sustained that sum.

Further, that certain vessels belonging to the United States were destroyed by Germany, whereby the United States was damaged in the sum of twelve million one hundred forty-four thousand and ninety-five dollars and twenty-seven cents (\$12,144,095.27), that Germany has agreed to reimburse the United States in these sums for and on account of the destruction of said vessels, but that it has not been paid by Germany nor has any other sum been paid.

And, third, that subsequent to the 3rd day of August, 1914, when war became flagrant between Germany on the one side and France and England and their allies on the other, the United States in accordance with certain acts of Congress, issued for valuable consideration policies of insurance upon certain vessels and their cargoes, and upon the lives of certain persons; that during the continuance of the said policies Germany destroyed the vessels and killed the persons enumerated, and by reason thereof the United States became liable to pay the owners of the vessels and the beneficiaries of the life insurance policies large sums of money, aggregating in value
108 twenty-nine million three hundred four thousand five hundred fifty-two dollars and eight-five cents (\$29,304,552.85), and that upon the payment of such sums the United States became sub-

rogated to all the rights of the owners of the vessels and the beneficiaries of the policies for the recovery of said sum. This is a summarization of the allegations of the paragraphs containing the separate and several defenses in the answers, and the court's attention is respectfully called to the specific allegations contained in paragraphs 11 to 42.

Upon this motion all the allegations in the said paragraphs must be taken as true. The contention of the Government is that the money of the Imperial German Government out of which the plaintiffs in those suits seek to recover their claims is in the possession of the United States in person of its officers, and that the United States is entitled to make claim against such money in the same manner as in other claims against Germans. The various provisions of the trading with the enemy act bearing upon this subject are quoted in the brief of these defendants in support of their motions to dismiss the bills, and they will not be set forth in full here.

It has been held that a suit of this nature against the Alien Property Custodian and Treasurer of the United States is, in effect, a suit against the United States. The Supreme Court so held in *Banco Mexicano vs. Miller*, No. 361, October term, 1923, decided January 31, 1924. This case has not yet been reported, but a copy of the opinion of the court is attached hereto. It was insisted by plaintiffs upon the motions to dismiss that unliquidated claims could not be collected in any event out of money in the hands of the Alien Property Custodian. In the first place, the defenses of the defendants

set up claims upon accounts stated which are in the strictest
109 sense liquidated claims. In the second place, the courts have

held that unliquidated claims are recoverable under section 9 of the trading with the enemy act. *Robertson vs. Alien Property Custodian*, Circuit Court of Appeals, 2nd Circuit, 286 Fed. 503, and *Rockwood vs. Miller*, Court of Appeals of the District of Columbia, 290 Fed. 341. So that such objections to the claims of the defendants acting for the United States are not tenable.

These defendants contend that it is a general principle of law that the United States is not bound by any provisions of a statute with respect to its claims, unless it is specifically mentioned in the statute. The Supreme Court has so held. In *Dollar Savings Bank vs. United States*, 86 U. S. (19 Wall.) 227, an objection was raised to the form of action which the United States adopted in suing for the recovery of taxes which were due. The United States brought an action of debt against the bank and it was insisted on behalf of the bank that the statute provided a method of suit and the United States must comply with the provisions of the statute. In answering this contention the Supreme Court said:

"It must also be conceded to be a rule of the common law in England, and it is in Pennsylvania and many of the other States, that where a statute creates a right and provides a particular remedy for its enforcement, the remedy is generally exclusive of all common-law remedies.

"But it is important to notice upon what the rule is founded. The reason of the rule is that the statute, by providing a particular remedy, manifests an intention to prohibit other remedies, and the rule, therefore, rests upon a presumed statutory prohibition. It applies and it is enforced when any one to whom the statute is a rule of conduct seeks redress for a civil wrong. He is confined to the remedy pointed out in the statute, for he is forbidden to make use of any other. But by the internal revenue law, the United
110 States are not prohibited from adopting any remedies for the recovery of a debt due to them which are known to the laws of Pennsylvania. The prohibitions, if any, either express or implied, contained in the enactment of 1866 are for others, not for the Government. They may be obligatory upon tax collectors. They may prevent any suit at law by such officers or agents. But they are not rules for the conduct of the State. It is a familiar principle that the King is not bound by any act of Parliament unless he be named therein by special and particular words. The most general words that can be devised (for example, any person or persons, bodies politic or corporate) effect not him in the least, if they may tend to restrain or diminish any of his rights and interests. He may even take the benefit of any particular act, though not named. The rule thus settled respecting the British Crown is equally applicable to this Government, and has been applied frequently in the different States, and practically in the Federal courts. It may be considered as settled that so much of the royal prerogatives as belonged to the King in his capacity of *parens patriae*, or universal trustee, enters as much into our political state as it does into the principles of the British constitution."

This case represents the general proposition of law that the United States is not bound by the limitations of its statutes. The same thing has been held in other circumstances. See *Guaranty Co. vs. Title Guaranty Co.*, 224 U. S. 152. *United States vs. Herron*, 20 Wall. 261, 260, and *Lewis Trustee vs. United States*, 92 U. S. 618.

With these cases in mind, it is the contention of the defendants that the United States has in its possession a large amount of money which, prior to seizure, belonged to the Imperial German Government; that the Imperial Government is indebted to the United States in various amounts and that the United States, where it has in its possession sums of money of this sort, cannot be compelled to
pay out of all such money to individual claimants against
111 Germany without being permitted to assert its own claims against such funds.

The principal contention of the plaintiffs in support of their motions to strike out the defenses in the case is that the Alien Property Custodian is not authorized to raise the defenses on behalf of the United States. The Alien Property Custodian and Treasurer of the United States certainly do not hold the money here in ques-

tion in their individual capacities. They are acting as officers of the United States. If they are acting as officers of the United States and hold the money as such it must inevitably follow that the money is held by the United States. These officers acting for the United States, not only may bring to the attention of the court the claims of the United States *States* against Germany but it is their duty to bring these claims to the attention of the court.

Not only on general principles is the United States entitled to have its claims considered in the distribution of the money of the Imperial German Government held by it, but a proper construction of the trading with the enemy act will establish the same result. Section 2 of the trading with the enemy act defines the word "person" to mean an individual, partnership, association, company, or other unincorporated body of individuals or corporation or body politic. The United States is a body politic. Under section 9 of the trading with the enemy act, quoted in the brief of these defendants in support of the motions to dismiss, it is provided that any person to whom a debt may be owing by an enemy may file a claim with the Alien Property Custodian and institute suit for the payment of such claim.

Under the definition of the word "person" the United States is a proper claimant under section 9. It is asserted by the plaintiffs that the United States has not filed a notice of claim as required by section 9. The intention of the statute as to the filing of claims
112 was to give the Alien Property Custodian notice of the claims against property in his hands. If the Alien Property Custodian is holding this property is, in effect, the United States, then the filing of a notice of claim would be a useless performance. No court would require a useless thing to be done nor would it construe a statute as so requiring.

It is asserted by the plaintiffs that the claims of the United States are a matter for international negotiations. This is no more true of the claims of the United States than of the claims of the plaintiffs. As these defendants endeavored to demonstrate on the motions to dismiss, all the question involved in the litigation here are questions of the obligation of a sovereign power, and if claims of the United States against Germany are subjects of diplomatic negotiation it must inevitably follow that the same would be true with respect to the claims of the plaintiffs in these cases.

It is respectfully submitted that the defenses raised in these cases are sound and that the motions to strike should be overruled.

Respectfully submitted.

(Signed)

ALLEN CURRY,

United States Attorney.

(Signed)

ADNA R. JOHNSON, Jr.,

(Signed)

DEAN HILL STANLEY,

Special Assistants to the Attorney General.

OPINION

Supreme Court of the United States

October Term, 1923

Appeal from the Court of Appeals of the District of Columbia

THE BANCO MEXICANO DE COMMERIO E INDUSTRIA AND	} No. 361
Elias S. A. De Lima, Francisco De P. Cardona, and	
113 Edwin J. Parkinson, as liquidators of said Banco	
Mexicano De Commercio e Industria, appellants,	
VS.	
DEUTSCHE BANK, A CORPORATION; THOMAS W. MILLER,	
Alien Property Custodian, and Frank White, Treasurer	
of the United States.	

(January 21, 1924)

Mr. Justice McKenna delivered the opinion of the Court.

Appeal from the decree of the Court of Appeals affirming the decree of the Supreme Court of the District of Columbia which dismissed the suit of appellants, brought in the latter court by them under the act of Congress of October 6, 1917, entitled "An act to define, regulate, and punish trading with the enemy, and for other purposes" as amended June 5, 1920. 40 Stats. 411, 41 Stats. 977.

The Deutsche Bank of Berlin was duly appointed liquidator of the Banco Mexicano, a banking corporation organized under the laws of Mexico, and authorized to act in the process of liquidation through Elias S. A. De Lima and Carlos Schulze as the representatives of the Banco Mexicano. Upon their appointment they proceeded with the liquidation of the affairs of the bank.

By virtue of their appointment and during the period they were acting as such liquidators, they were authorized to make loans of the assets of the bank for its account and to collect and, if necessary, to sue for and collect upon the claim which is the subject of this action.

They as liquidators for and on behalf of the Banco Mexicano made a loan of 500,000 gold dollars in New York City on December 15, 1916, to the Deutsche Bank of Berlin, a banking corporation existing under the laws of the German Empire, for 114 six months with interest at the rate of 5% per annum.

The amount was paid to Hugo Schmidt, the agent of the latter bank, at its place of business in the United States, and the bank agreed to repay the same in that city on June 15, 1917, with interest at the rate above mentioned.

Upon receiving that amount, represented by check, the bank forthwith deposited the same with the Guaranty Trust Company of New

York to the credit of its general bank account which it then had with that institution.

On April 6, 1917, war was declared between the United States and Germany. Thereafter, as the appellants are informed and believe, under the provisions of the trading with the enemy act and other statutes in such case made and provided, all moneys, securities, and property owned by the Deutsche Bank in the United States or held for it by others were turned over to or seized by the Alien Property Custodian of the United States and have ever since been held by him.

It is averred, on information and belief, that the money so loaned was never transferred from the United States physically or otherwise, but constituted a part of the balance of the general deposits and securities and other property in the United States of the bank which were taken over and seized by the Alien Property Custodian. The total amount of such balance and the total value of the securities and property, are unknown to appellants but are sufficient, as they are informed and believe, after the payment and satisfaction of all other claims and demands, fully to pay, satisfy and discharge the claim and demand of the appellants arising upon the loan.

After the loan was made and until its balance, securities and other property were turned over to the Alien Property Custodian
115 the Deutsche Bank continuously kept in the United States sufficient funds and property over and above what was necessary to pay and discharge all other claims and demands of every kind, to repay the loan with interest, and the funds and securities were kept in the United States for the express purpose and with the intention by the use thereof of repaying the loan when it fell due. And the bank would have in the ordinary and usual course of business, repaid the same when the debt fell due if war had not intervened between the United States and Germany.

On June 15, 1917, there became due to appellants from the Deutsche Bank the amount of the loan and it is still due, although they have made demands for the payment thereof upon the bank and the Alien Property Custodian.

In pursuance of section 9 of the trading with the enemy act, the appellants, as liquidators and in behalf of the Banco Mexicano, or on about May 27, 1920, filed with the Alien Property Custodian a notice of claim, under oath, and in such form and containing such particulars as was required by that section and as the custodian had prescribed, demanding payment of the debt above described, with interest thereon then accrued, by the custodian, from the money or other property belonging to the bank, or held by him or by the Treasurer of the United States.

On or about the same day a similar application was filed with the President of the United States. Neither the President nor the Alien Property Custodian has paid the debt or the interest thereon.

Appellants aver that since December 15, 1916, the Deutsche Bank kept in the United States sufficient cash and marketable securities

over and above its obligations to enable it to pay the loan and interest, and that the Alien Property Custodian and Treasurer of the

United States now hold sufficient cash and securities formerly
116 owned by the bank and seized by the custodian over and above all claims against the same to pay the debt with interest.

Appellants are advised and believe that under the law of New York State and in the event of default by the Deutsche Bank in the payment of the loan they would have had, on June 15, 1917, and ever since, and now have a cause of action against the bank upon which they could have sued and can now sue, and could have procured and can now procure the issue of a writ of attachment under which the funds and securities of the bank in New York City could have been and now can be levied upon and seized and applied in satisfaction of a judgment obtained.

It is averred that by reason of the foregoing facts the debt of the appellants arose with reference to the money and other property within the meaning and intention of subdivision (e) of section 9 of the "trading with the enemy act."

A motion to dismiss the bill of appellants was made, the grounds thereof being (1) appellants are claimants other than citizens of the United States, and that the debt which they are seeking to recover did not arise with reference to money or any other property held by the Alien Property Custodian or the Treasurer of the United States under and pursuant to the terms and provisions of the trading with the enemy act, as amended.

(2) The appellants have not set forth facts sufficient to entitle them to equitable relief under section 9 of the trading with the enemy acts, as amended.

The motion was granted and a decree made and entered dismissing the bill.

Upon the appeal of appellants the decree was affirmed by the Court of Appeals of the District of Columbia, to review which action this appeal is prosecuted.

117 The case is in narrow compass. The facts are set forth in the bill; the law adduced, that is, section 9, as amended, it is contended, constitutes them grounds of recovery prayed for and demonstrates the error in the decree appealed from. We quote it although its pertinent and determining words are few. As passed October 6, 1917, it is as follow:

"That any person not an enemy or ally of enemy claiming any interest, right, or title in any money or other property which may have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States, or to whom any debt may be owing from any enemy or ally of enemy whose property or any part thereof shall have been conveyed, transferred, assigned, delivered or paid to the Alien Property Custodian, or seized by him hereunder and held by him or by the Treasurer of the United States may file with the said custodian a notice of his

claim under oath and in such form and containing such particulars as the said custodian shall require; and the President, if application is made therefor by the claimant, may order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States, or of the interest therein to which the President shall determine said claimant is entitled: Provided, That no such order by the President shall bar any person from the prosecution of any suit at law or in equity against the claimant to establish any right, title, or interest which he may have in such money or other property. If the President shall not so order within sixty days after the filing of such application or if the claimant shall have filed the notice as above required and shall have made no application to the President, said claimant may, at any time before the expiration of six
118 months after the end of the war institute a suit in equity in the Supreme Court of the District of Columbia or in the district court of the United States for the district in which such claimant resides * * * to establish the interest, right, title, or debt so claimed."

The amendment of June 5, 1920, is as follows: "No money or other property shall be returned nor any debt allowed under this section to any person who is a citizen or subject of any nation which was associated with the United States in the prosecution of the war, unless such nation in like case extends reciprocal rights to citizens of the United States; nor in any event shall a debt be allowed under this section unless it was owing to and owned by the claimant prior to October 6, 1917, and as to claimants other than citizens of the United States unless it arose with reference to the money or other property held by the Alien Property Custodian or Treasurer of the United States hereunder."

The amendment provides that: "Nor in any event shall a debt be allowed under this section unless it was owing to and owned by the claimant prior to October 9, 1917, and as to claimants other than citizens of the United States unless it arose with a reference to the money or other property held by the Alien Property Custodian or Treasurer of the United States hereunder."

The italics are ours and mark the words which make the controversy. The Court of Appeals regarded that a limitation upon the generality of the section as originally enacted—an exception from its indulgence of claimants other than citizens of the United States unless the debt arose with reference to the money or other property held by the Alien Property Custodian or Treasurer of the United States under the act.

We concur. The condition did not exist in the claimant. The debt did not arise with reference to the money or property

119 held. The transaction was an ordinary business one—money borrowed to be repaid at a specified distant date, a deposit of it in the ordinary way and with the legal result and relation—the creation of debtor and creditor—not a word or act else—not a word or act else giving the transaction other character or quality. No distinction, indeed, from any other transaction, nothing to give specification to it or particular remedy.

But particularity is not necessary, is the contention. Mere trace of a relation seems, in counsel's view, to satisfy the requirement of section 9. The definition of the Standard Dictionary is adduced, and from it, it is said, it is reasonable to look upon "with reference to" as equivalent to "with an eye toward." To give this pertinence, necessarily, the eye must see what the statute requires to be seen—a debt that had fixed some right or title or equity to the money or other property held by the Alien Property Custodian or by the Treasurer of the United States.

In support of counsel's view, the explanation of the amendment by the Congressman in charge of it is quoted as giving a remedy to a just "debt owed to a citizen of a friendly nation, that originated with reference to the property which is over here." And further "there would seem to be no reason in justice or good morals why that property here should not pay it subject to the limitation that it must have been a debt that accrued prior to the enactment of the trading with the enemy act." This is given emphasis of meaning by the contrast of "enemy creditors" which it was declared "should be collected by other means than out of this property here." The views of the Attorney General were also referred to and the absence of any recommendation by the Committee on Interstate and Foreign Commerce of an intention "to make radical changes in the rights and remedies of friendly aliens as they had been created by the act previously in force."

120 It may be conceded that there is some suggestive strength in this history, but it is to be remembered that an act of legislation is not the act of one legislator, and its meaning and purpose must be expressed in words. If there be ambiguity in them it is the office of construction to resolve it. This we think the Court of Appeals exercised, and to a right conclusion.

A contention, or rather the support of the main contention is made by appellants by reference to the New York statutory law which authorized, it is said, an action against a foreign corporation—in this case by the Banco Mexicano against the Deutsche Bank—for the collection of its note, a writ of attachment and a judgment that could be satisfied out of the property attached. And the further contention is that by section 9, as amended, "nonresident alien individuals and corporations were accorded broader rights even than they then enjoyed under the laws of New York, in that, they could collect their

indebtedness out of the property of nonresident alien enemies in the hands of the custodian wherever and however it arose and whatever its nature," but this is a conclusion deduced from the construction put upon section 9 which we think is untenable.

We repeat, we do not think that the debt arose with reference to the money or other property held by the Alien Property Custodian.

Therefore, the prayer of the bill of complaint should be denied. We are constrained to this because we agree with the Court of Appeals that this suit is in effect a suit against the United States and all of its conditions must obtain.

Decree affirmed.

The Chief Justice took no part in the consideration or decision of the case.

121 A true copy.

Test:

Clerk, Supreme Court, U. S.

Over the objection of the defendants on the ground that it was incompetent, irrelevant, and immaterial and with the exception of the defendants, there was admitted into evidence, an authenticated copy of certain documents of the Treasury Department which were marked "Plaintiffs' Exhibit No. 4," and is in words and figures as follows:

PLAINTIFFS' EXHIBIT 4 TO TESTIMONY OF R. A. HUBER

UNITED STATES OF AMERICA,
TREASURY DEPARTMENT,

April 5, 1924.

Pursuant to section 882 of the Revised Statutes I hereby certify that the annexed papers are true copies of the record entries of the Treasury in trust No. 9322, "Undisclosed enemy #1," and trust No. 555—special, "Imperial German Government," showing transfer of funds from trust No. 9322 to trust No. 555—special, and the letter dated March 9, 1923, authorizing such transfer, in this department.

In witness whereof I have hereunto set my hand and caused the seal of the Treasury Department to be affixed, on the day and year first above written.

[SEAL.]

GARRARD B. WINSTON,
Undersecretary of the Treasury.
F. H.

Treasury Department,
Chief clerk and superintendent.

122 Trust #9322. Undisclosed enemy #1.

Date	C/D No.	Amount	Col. Bk.
3/29/18	1	5,077,057.64	-----

NOTE.—Above amount originally deposited by custodian in Boston F. R. B. transferred to Treasury under above date.

M.

Trans. to Tr. 555 special 2,200,000.00 A. P. C. letter 3/9/23.

2,877,057.64

(Written in red ink:) 4 suits 5/11/23. 5 suits.

Trust #555—special. Imperial German Government.

Date	C/D No.	Amount	Col. Bl.
Trans. from Tr. #9322		\$2,200,000.00 A. P. C. letter of 3/9/23.	

Do not post on this card.

[Copy]

ALIEN PROPERTY CUSTODIAN, ARLINGTON BUILDING,
Vermont Avenue and H Street, Washington, March 9, 1923.

The honorable the SECRETARY OF THE TREASURY,

DIVISION OF BOOKKEEPING & WARRANTS,
Washington, D. C.

SIR: On March 29, 1918, there was established a credit of \$5,-
077,057.64 for special account No. 8—account of undis-
123 closed enemy No. 1—trust 9322, representing funds held by
the Federal Reserve Bank of Boston.

It is now desired that you transfer on your records from trust
9322 the sum of \$2,200,000.00 to the account of the Imperial Ger-
man Government—trust No. 555—special. It is desired that this
fund of \$2,200,000.00 be not intermingled with funds already on
deposit in trust 555 and is therefore desired that you mark the new
account opened as "Trust No. 555—special."

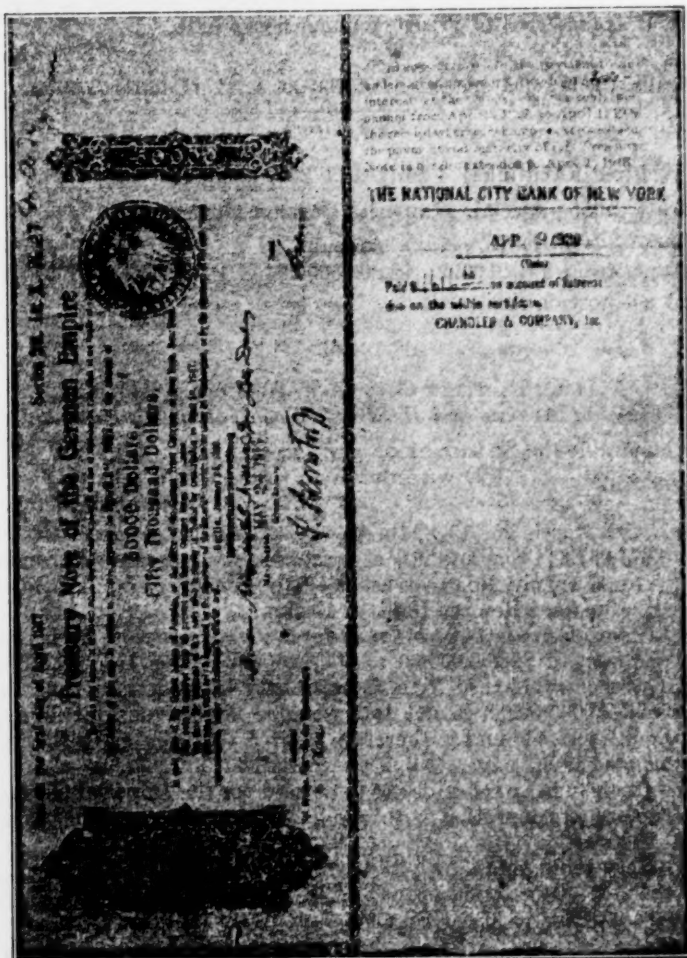
The funds to be so set aside are to be used for the Imperial German
Government in connection with claim No. 386 and the claims asso-
ciated therewith.

Very truly yours,

(Signed)

DIVISION OF TRUSTS,
WM. M. WHITE,
Assistant Chief.

The plaintiffs offered in evidence certain notes of the Imperial
German Government, the originals thereof being withdrawn with
the permission of the court and copies thereof substituted. These
notes last offered in evidence were marked, respectively, plaintiff's
Exhibits Nos. 5 to 38, both inclusive, and are in words and figures
as follows:



124-125 EXHIBIT IN EVIDENCE TO TESTIMONY OF R. A. HUBER

126-127 EXHIBIT IN EVIDENCE TO TESTIMONY OF R. A. HUBER

128

Stipulation re notes

It is hereby stipulated and agreed by and between attorneys for the respective parties to the above-entitled cause, as follows, to-wit:

1. That the notes sued on by the complainant are genuine and authentic 6% treasury notes of the Imperial German Government, known as series number 26, Lit. X, issued as of May 6th, 1916, bearing serial numbers 27 and 28 for \$50,000.00 each and carrying interest at the rate of 6% per annum.

2. That in the event final decree is entered herein against the defendant Thomas W. Miller, Alien Property Custodian, and Frank White, Treasurer of the United States, such decree shall not provide for the payment of any interest by the defendants Thomas W. Miller, Alien Property Custodian and Frank White, Treasurer of the United States, between the 6th day of April, 1917, and the 14th day of July, 1919.

FORDYCE, HOLLIDAY & WHITE,
Attorneys for Complainant.

ALLEN CURRY,
United States Attorney, Attorney for Defendants.

ADNA R. JOHNSON, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

My name is Adna R. Johnson. I live in Washington, D. C. I am special assistant to the Attorney General. The work assigned to me is work connected with the disposition and trial of cases involving alien property. It is necessary in connection with my work to have frequent conferences with the Alien Property Custodian. I have such conferences with Thomas W. Miller, Alien Property Custodian. I have discussed with Thomas W. Miller, Alien Property Custodian, the various issues raised in these cases.

At this point the plaintiffs objected to this line of testimony, which objection was overruled and an exception to the ruling granted.

The witness was shown what purported to be a copy of a letter addressed to the honorable the Secretary of the Treasury, Washington, by the Alien Property Custodian, and he was asked whether he had ever seen the original of this letter.

The witness further testified:

I have seen the original of that letter. I saw it at the office of the Alien Property Custodian. There were present at the time Colonel Miller, the custodian, Mr. George Williams, his assistant, and myself. The original letter was signed by the custodian. I saw him sign it.

The witness was asked the question, "What did he do with it after he signed it?" To this question and to this line of testimony the

plaintiffs objected, which objection was overruled and an exception granted.

The witness continuing testified:

Colonel Miller delivered it to his secretary with instructions to forward it forthwith to the Secretary of the Treasury.

The defendants offered the said letter in evidence which the plaintiffs objected to on the ground that the same was irrelevant and immaterial, and not the best evidence. Said objection was overruled.

Plaintiffs asked an exception.

130 The letter last offered in evidence in the form of a carbon copy was marked "Defendants' Exhibit A," and is in words and figures as follows, to wit:

EXHIBIT A TO TESTIMONY OF ADNA R. JOHNSON

MARCH 14, 1924.

The honorable the SECRETARY OF THE TREASURY,
Washington

(Division of Bookkeeping and Warrants.)

SIR: Under date of March 29, 1918, there was deposited to the credit of trust No. 9322, undisclosed enemy No. 1, the sum of \$5,077,-057.64. On March 10, 1923, there was transferred from this trust to trust No. 555 special, the sum of \$2,200,000.00 under orders from this office.

This letter is for the purpose of withdrawing the instructions sent you under date of March 10, 1923, and it is our desire that the sum of \$2,200,000.00 be retained in trust No. 9322, undisclosed enemy No. 1.

It was not intended that the administrative action so taken and within the proper functions of this office should be construed as establishing title or ownership to the fund so transferred.

I am advised by the Department of Justice that a decree has been entered in the suit of the Mechanics Security Corporation against Thomas W. Miller, as Alien Property Custodian and Frank White, Treasurer, requiring the payment by you out of the funds so transferred, of the sum of \$500,000.00; and that this decree was entered without proof of ownership in the Imperial German Government, because of an admission contained in our answer that the said fund had been transferred. The answer was intended and supposedly contained the necessary allegation to require proof of ownership.

131 There has been filed with this office a claim of the United States of America by Frank T. Hines, Director of the United States Veterans' Bureau, for the sum of \$29,304,553.39 and I am further advised that numerous other suits are pending by private claimants against the Imperial German Government, seeking resort to the fund so established. It is clear to me that the public interest

requires that before any of these moneys be disbursed, there shall be a judicial determination of ownership, and I am accordingly requesting the foregoing action, pending a determination by the courts on this point.

Respectfully yours,

TWM:SH

THOMAS W. MILLER,
Alien Property Custodian.

The witness continuing testified:

After the occurrence concerning which I have just testified I received in the Department of Justice notice to the effect that the Treasurer had received the letter, in that the Treasurer was asking the Department of Justice for certain advice concerning the action that should be taken relative to the letter. I received this information in discussions with the assistant to the Attorney General, Mr. A. T. Seymour. This communication relative to the letter was with Mr. Seymour in a verbal talk, and there was also submitted to me a letter from the Treasurer, in which the question raised in the letter was discussed.

The witness was asked the question, "Mr. Johnson, will you state to the court, please, the nature of your duties as special assistant to the Attorney General, assigned to the work concerning which you have testified," to which question the plaintiffs objected, and their objection being overruled, an exception was granted.

132 The witness testifying in answer to the question stated:

The nature of my work is generally to pass upon cases which are submitted for executive action to the Attorney General, for recommendation to the President; the preparation of cases for hearing and for the passing upon questions asked by Cabinet officials or the President, which questions are temporarily prepared by the division of which I have charge, and then submitted either to the Attorney General, or to the Acting Attorney General. Recently I have had submitted to me questions connected with these cases.

To this answer the plaintiffs objected on the ground that the answer was irrelevant. The objection was overruled and an exception granted.

The question was asked, "Will you state what questions, if any, or any of the questions that have been referred to you," to which question the plaintiffs objected, the objection being overruled and an exception granted. In answer to the question the witness testified:

The question asked by the Treasury whether or not it should re-transfer the funds here involved, namely, the \$2,200,000 from a credit to the Imperial German Government to the unknown enemy No. 1, from whence these funds came. I did not prepare any opinion for submission to the Attorney General on that point. I do not know whether an opinion has been written. The question was referred to others in the department.

Upon cross-examination the witness testified as follows:

I did not dictate the letter dated March 14, 1924, to the Secretary of the Treasury from the Alien Property Custodian. I did not prepare any memoranda or writing as a basis for the dictation of this letter by Colonel Miller. The letter was prepared by Colonel Miller and his assistants there, at his own instigation. Colonel
133 Miller dictated a portion of it. Mr. Wilson was not present.

I was present when the letter was dictated. I heard Colonel Miller dictate portions of the letter. I do not think Colonel Miller dictated all of it. I do not know what portion he did dictate. I did not dictate any portion of the letter. I may have made some suggestions but I do not remember dictating any part of it.

M. CARTER HALL, being called as a witness on behalf of the plaintiffs, testified as follows:

My name is M. Carter Hall. I am an attorney at law, practicing in Washington, District of Columbia. I am attorney of record in the case of Mechanics Securities Corporation against Frank White, as Treasurer of the United States, and Thomas W. Miller, as Alien Property Custodian. I saw Colonel Thomas W. Miller, Alien Property Custodian, in his office at Washington between three-thirty and five-thirty o'clock on or about the 12th day of March, 1924. Colonel Miller made a statement to me at that time with reference to his determination as to the fund. The question was asked, "What was his statement," to which question the defendants objected on the ground that the question called for incompetent, irrelevant, and immaterial matter. The objection was overruled and an exception noted.

The witness in answer to the question testified as follows:

The custodian at that time stated that he was satisfied with his determination; that he was satisfied that it was correct; that the plaintiffs had agreed with him when he recommended the allowance of these claims by the President; and that two courts had since
134 agreed with him and that he intended to stick to his determination as laid in this case. The determination was shown by

his recommendation to the Attorney General with respect to the allowance of these claims and as to the ownership of the funds in question, namely, that they were held for, by, or on account of the Imperial German Government.

Upon cross-examination the witness testified as follows:

At the time I talked to Colonel Miller he did not state to me what two courts had determined that this money belonged to the Imperial German Government, but he knew it was the Supreme Court of the District of Columbia and the District Court out here, Judge Faris. I can not refer to any opinion of Judge Faris in which, as a matter of fact, he determined that this was the money of the Imperial German Government at the time of seizure. I do not know of any opinion of Judge Faris to that effect.

Stipulation re statement of evidence

And now it is hereby agreed between the parties to the above entitled action that the foregoing "Statement of the evidence" contains all of the evidence offered and received on the trial of the above-entitled action, together with all objections thereto, all rulings of the court on said objections, and all exceptions allowed by the court to said rulings. And that the foregoing "Statement of the evidence" correctly shows the proceedings had on said trial, and is correct in all respects, and that it may be signed, settled, allowed, and approved by the court or by said presiding judge thereof, and that it may thereupon be filed in the office of the clerk of said court and become part of the record for the purposes of the appeal of this action.

135 Dated at St. Louis, Missouri, this 4th day of Aug. 1924.
(Sgd.) FORDYCE, HOLLIDAY & WHITE,

Attorney for the Plaintiff.

(Sgd.) ALLEN CURRY, *United States Attorney,*
Solicitor for Thomas W. Miller, as Alien Property Custodian, and
Frank White, as Treasurer of the United States.

In United States District Court

Judge's certificate to statement of evidence

The foregoing statement of the evidence contains all of the evidence given or offered on the trial of said cause of Mercantile Trust Company, complainant, against Thomas W. Miller, as Alien Property Custodian, and Frank White, as Treasurer of the United States of America, defendants, and correctly shows the proceedings on said trial, together with all objections to the evidence offered, all rulings on said objections and all exceptions allowed to said rulings, and said statement of the evidence is correct in all respects and is hereby settled, allowed and approved and made part of the record herein.

Dated this 8 day of August, 1924.

(Sgd.)

CHARLES B. DAVIS,

United States District Judge for the Eastern District of Missouri.

In United States District Court

Final decree. Filed May 7, 1924

This cause having heretofore been heard on the 8th day of April, 1924, on the bill of complaint of the complainant, the
136 amended answer of defendants, Frank White as Treasurer of the United States, and Thomas W. Miller as Alien Property Custodian, and on the suggestion of the United States of America filed herein by the Acting Attorney General of the United

States on said 8th day of April, 1924, and on the answer of complainant to said suggestion filed on said 8th day of April, 1924; and complainant by its attorneys and solicitors having on said day presented evidence supporting the allegations of the bill of complaint, and said Frank White as Treasurer of the United States, and said Thomas W. Miller as Alien Property Custodian, being present by their attorneys and solicitors on said day, having presented evidence in their behalf, and the United States of America, being present by its attorneys and solicitors, having presented evidence in behalf of said suggestion, and the cause having been argued by counsel and taken under advisement of the court, and the court having considered all of the pleadings in the case, including the suggestion and the facts therein brought to its attention, together with the evidence offered by the United States in support thereof, and all the evidence introduced at the trial, carefully and with the deliberation to which such a suggestion is entitled, it is by the court this 7th day of May, 1924, ordered, adjudged, and decreed:

1. That the said complainant is not, and never has been, an enemy or ally of enemy within the provisions of an act of Congress, approved October 6th, 1917, entitled "An act to define, regulate, and punish trading with the enemy, and for other purposes," as amended.

2. That prior to October 6th, 1917, the Imperial German Government was an enemy within the provisions of said trading with the enemy act, and owed the complainant a debt in the sum of one hundred thousand dollars (\$100,000.00) evidenced by its treasury notes, as follows:

137 Issue May 6, 1916, series 26, Lit. X, 27 and 28, \$50,000.00 each, both of said notes bearing 6% interest.

3. That the complainant has established said debt and is entitled to be paid the sum of one hundred thousand dollars (\$100,000.00) and interest at the rate of six per centum (6%) per annum from July 14th, 1919, out of funds aggregating two million seven hundred and fifteen thousand five hundred seventy-one dollars (\$2,715,571.00) belonging to the Imperial German Government, and seized by the defendant, Thomas W. Miller as Alien Property Custodian, and in the possession of the defendant, Frank White, as Treasurer of the United States.

4. That the suggestion of the United States of America, the facts therein alleged, and the evidence offered in connection therewith are immaterial and irrelevant to this cause, and are insufficient in law to maintain a claim on behalf of the United States, and that the same constitute no ground for defense to the cause of action of the complainant, and that the relief sought in the prayer of said suggestion on the part of the United States of America is hereby denied.

5. That upon presentation and surrender of said treasury notes of the Imperial German Government, as set forth herein, the said defendant, Frank White, as Treasurer of the United States, shall

forthwith pay and deliver to the said complainant the said sum of one hundred thousand dollars (\$100,000.00) with interest at the rate of six per centum (6%) per annum from July 14th, 1919, until paid.

(Signed) CHARLES B. DAVIS,
Judge.

In United States District Court

Petition for appeal. Filed June 19, 1924.

Now come the defendants, Thomas W. Miller, as Alien Prop-
erty Custodian, and Frank White, as Treasurer of the United
States, by their solicitor, Allen Curry, Esq., United States
attorney for the Eastern District of Missouri, and conceiving them-
selves aggrieved by the decree and order made and entered on the 7th
day of May, 1924, in the above-entitled cause, do hereby appeal from
the said order and decree to the United States Circuit Court of Ap-
peals for the Eighth Circuit, for the reasons specified in the assign-
ment of errors, which is filed herewith, and they pray that a citation
be issued, as provided by law, and that a transcript of the record,
proceedings and papers upon which said order and decree were made,
duly authenticated, may be sent to the United States Circuit Court
of Appeals for the Eighth Circuit.

Dated, St. Louis, Missouri, June 19, 1924.

(Sgd.) ALLEN CURRY,

*United States Attorney for the Eastern District of
Missouri, Solicitor for Thomas W. Miller, as Alien Property
Custodian, and Frank White, as Treasurer of the United States.*

In United States District Court

Assignments of error. Filed June 19, 1924

Now come the defendants, Thomas W. Miller, as Alien Property
Custodian, and Frank White, as Treasurer of the United States,
and file the following assignment of errors upon which they will rely
upon their appeal from the order made by this honorable court on the
7th day of May, 1924, in the above-entitled cause:

First. That the court erred in overruling the motion to dismiss
filed on behalf of the defendants.

Second. That the court erred in not sustaining the motion to
dismiss filed on behalf of the defendants.

139 Third. That the court erred in not ordering, adjudging,
and decreeing that the bill of complaint be dismissed.

Fourth. That the court erred in sustaining the motion to strike
out the separate and several defenses of the answer filed on behalf
of the defendants.

Fifth. That the court erred in striking out from defendants'
answer subdivisions 11 to 25, inclusive, of Paragraph III; subdivi-
sions 26 to 31, inclusive, of Paragraph IV; subdivisions 32 to 42,

inclusive, of Paragraph V, and all that part of the said answer which prayed the court to find and decree that the United States have judgment for the amounts due to it by reason of the facts alleged in Paragraphs III, IV, and V of the answer.

Sixth. That the court erred in not overruling the motion by the plaintiff to strike out from the defendants' answer subdivisions 11 to 25, inclusive, of Paragraph III; subdivisions 26 to 31, inclusive, of Paragraph IV; subdivisions 32 to 42, inclusive, of Paragraph V, and all that part of the said answer which prayed the court to find and decree that the United States have judgment for the amounts due to it by reason of the facts alleged in Paragraphs III, IV, and V of the answer.

Seventh. That the court erred in adjudging and holding that this is not a suit against the United States.

Eighth. That the court erred in adjudging and holding that the defendants, as officers of the United States had not the right to raise the separate and several defenses in the answer on behalf of the United States of America.

Ninth. That the court erred in adjudging and holding that the defendants, as officers of the United States were not the United States.

Tenth. That the court erred in adjudging and holding that the word "person" as used in section 9 of the trading with the enemy act as amended does not include the United States of America.

Eleventh. That the court erred in not granting the prayers of the original answer filed by these defendants.

Twelfth. That the court erred in adjudging and holding that the Imperial German Government, or its successor or successors, is not a necessary party to the suit.

Thirteenth. That the court in not ordering, adjudging, and decreeing that the United States of America is a "person" within the meaning of that word as used in section 9 of the trading with the enemy act, as amended.

Fourteenth. That the court erred in not ordering, adjudging, and decreeing that the United States of America is entitled to have paid out of any money or other property held by the Alien Property Custodian or the Treasurer of the United States, which money or other property was at the time of the receipt thereof by the Alien Property Custodian or the Treasurer of the United States the money or other property of the Imperial German Government, the amount of its debt against the Imperial German Government, as set forth in the original answer of these defendants.

Fifteenth. That the court erred in not ordering, adjudging, and decreeing that any claim of the United States of America against the Imperial Government is entitled to priority of payment out of any money or other property held by the Alien Property Custodian, and/or the Treasurer of the United States, which at the date of the

receipt thereof by the said custodian and/or the Treasurer was the money or other property of the Imperial German Government.

Sixteenth. That the court erred in ordering, adjudging, and
141 decreeing that the plaintiff has established a debt and is entitled to be paid the sum of \$100,000 and interest at the rate of 6% per annum from July 14, 1919, out of funds aggregating \$2,715,571, belonging to the Imperial German Government, and seized by the defendants, Thomas W. Miller, as Alien Property Custodian, and in the possession of the defendant, Frank White, as Treasurer of the United States.

Seventeenth. That the court erred in ordering, adjudging, and decreeing that there was in the possession of the defendant, Frank White, as Treasurer of the United States, \$2,715,571 belonging to the Imperial German Government.

Eighteenth. That the court erred in ordering, adjudging, and decreeing that the defendant, Thomas W. Miller, as Alien Property Custodian, seized the sum of \$2,715,571 belonging to the Imperial German Government.

Nineteenth. That the court erred in not ordering, adjudging, and decreeing that there was not in the possession either of Thomas W. Miller as Alien Property Custodian, and Frank White, as Treasurer of the United States, or either of them, any sum of money which at the time of the receipt thereof by either the Custodian or the Treasurer, was the money of the Imperial German Government.

Twentieth. That the court erred in not ordering, adjudging, and decreeing that there was no evidence in the case to show there was in the possession either of Thomas W. Miller, as Alien Property Custodian, or Frank White, as Treasurer of the United States, any money belonging to the Imperial German Government, or its successor or successors.

Twenty-first that the court erred in admitting into evidence over the objection of the defendants the document designated "Plaintiff's

Exhibit 1," which is in words and figures as follows:

142 [Plaintiff's Exhibit 1 to assignments of error omitted.

Printed side page 8, ante.]

155 [Exhibits A, B, C, and D to assignments of error omitted.

See Exhibit "A," printed side page 21, ante.]

178 Twenty-second: That the court erred in admitting into evidence over the objection of the defendants a stipulation designated as "Plaintiff's Exhibit 2" which is in words and figures as follows:

[Plaintiff's Exhibit 2 to assignments of error omitted. Printed side page 101, ante.]

182 Twenty-third. That the court erred in admitting into evidence over the objection of the defendants the brief on behalf of the defendants in opposition to the motion to strike certain portions of the answers filed in the cases, which document is marked "Plaintiff's Exhibit 3," which is in words and figures as follows:

[Plaintiff's Exhibit 3 to assignments of error omitted. See Exhibit 3, printed side page 105, ante.]

189 [Opinion of Supreme Court of United States, etc., omitted. Printed side page 112, ante.]

197 Twenty-fourth. That the court erred in admitting into evidence over the objection of the defendants certain documents designated "Plaintiff's Exhibit 4," which documents are in words and figures as follows:

[Plaintiff's Exhibit 4 to assignments of error omitted. See Exhibit 4. Printed side page 121, ante.]

199 Twenty-fifth. That the court erred in not ordering, adjudging, and decreeing that the evidence was insufficient to warrant a decree in favor of the plaintiffs.

200 Twenty-sixth. That the court erred in not ordering adjudging, and decree that the bill of complaint be dismissed.

Twenty-seventh. That the court erred in not dismissing the bill of complaint.

All of which is respectfully submitted.

Dated St. Louis, Missouri, the 19 day of June, 1924.

(Sgd.) ALLEN CURRY,
United States Attorney,

*Solicitor for Thomas W. Miller, as Alien Property Custodian,
and Frank White, as Treasurer of the United States.*

In United States District Court

Order allowing appeal. Filed June 19, 1924

Upon reading the petition of Thomas W. Miller, as Alien Property Custodian, and Frank White, as Treasurer of the United States, dated St. Louis, Missouri, the 19 day of June, 1924, for the allowance of an appeal, and upon consideration of the assignment of errors presented therewith, it is

Ordered that the appeal as prayed for be, and the same is hereby, allowed and that a certified copy of the record and proceedings be forthwith transmitted to the Circuit Court of Appeals for the Eighth Circuit, and it appearing that this appeal is taken by direction of a department of the Government, to wit, the Department of Justice, it is further

Ordered that said appeal shall operate as a supersedeas and that no bond, obligation, or security shall be required from the appellants, Thomas W. Miller, as Alien Property Custodian, and
201 Frank White, as Treasurer of the United States, either to prosecute the same or to answer in the damages and costs.

Dated, St. Louis, Missouri, the 19 day of June, 1924.

(Sgd.) CHARLES B. DAVIS,
United States District Judge.

In United States District Court

Praeipie for transcript of record. Filed June 21, 1924

The clerk will please prepare a transcript of the record on appeal in the above-entitled case, and include therein the following:

Bill of complaint.

Subpoenas.

Motion to dismiss and original answer.

Motion to strike out the separate and several defenses of the answer.

Opinion of Judge Faris upon motion to dismiss and motion to strike out.

Order overruling the motion to dismiss.

Order granting the motion to strike out the separate and several defenses of the answer.

Amended answer to the bill of complaint.

Statement of the evidence.

Final decree.

202 Petition for appeal.

Order allowing appeal.

This designation of record.

Citation.

(Sgd.) ALLEN CURRY,

*United States Attorney for the Eastern District of Missouri,
Solicitor for Thomas W. Miller, as Alien Property Custodian, and Frank White, as Treasurer of the United States.*

In United States District Court

Memorandum reprinting. Filed July 8, 1924

TO JAMES J. O'CONNOR,

Clerk of the United States District Court,

St. Louis, Missouri:

Comes now Allen Curry, United States attorney in and for the eastern district of Missouri, counsel for the United States of America, and elects to print the record in the above-entitled cause in the Circuit Court of Appeals for the Eighth Circuit under the supervision of the clerk of said court.

(Sgd.) ALLEN CURRY,
United States Attorney.

In United States District Court

Order extending time

Upon oral application of Allen Curry, United States attorney for and on behalf of Frank White, Treasurer of the

203 United States, and Thomas W. Miller, Alien Property Custodian, for good cause shown, it is hereby ordered that the time within which the said defendants shall file in the United States Circuit Court of Appeals, Eighth Circuit, a transcript of record on appeal in the above cause be and the same is hereby extended to and including the 18th day of October, 1924.

Dated at St. Louis this 18th day of August, 1924.

CHARLES B. DAVIS, *Judge*.

In United States District Court

Clerk's certificate

UNITED STATES OF AMERICA,

*Eastern Division of the Eastern Judicial District
of Missouri, ss:*

I, Jas. J. O'Connor, clerk of the District Court of the United States in and for the Eastern Division of the Eastern Judicial District of Missouri, do hereby certify that the foregoing is a full, true, and complete transcript of the record and proceeding in cause No. 6335, in equity, wherein Mercantile Trust Company, a corporation, is complainant and Frank White, Treasurer of the United States, et al., are defendants, in the matter of the appeal of Frank White, Treasurer of the United States, and Thomas W. Miller, Alien Property Custodian (except in so far as the same is restricted by the praecipe for transcript of the record heretofore set out) as fully as the same remains on file and of record in my office, and that the original citation is hereto attached.

204 In witness whereof, I have hereunto set my hand and [Seal affixed the seal of said court at office in the United States city of St. Louis, in the eastern division of Dist. Court said district, this 6th day of October, in the Eastern Dist. year of our Lord nineteen hundred and twenty- of Missouri.] four.

JAS. J. O'CONNOR,

Clerk of Said Court.

By JOSEPH M. WALSH,

Deputy.

Filed Oct. 9, 1924. E. E. Koch, Clerk.

In United States Circuit Court of Appeals for the Eighth Circuit

THOMAS W. MILLER, AS ALIEN PROPERTY CUSTODIAN, AND
Frank White, as Treasurer of the United States, peti-
tioners

vs.

MERCANTILE TRUST COMPANY, A CORPORATION

No. 6834

THOMAS W. MILLER, AS ALIEN PROPERTY CUSTODIAN, AND
Frank White, as Treasurer of the United States, peti-
tioners

vs.

NORTHWESTERN TRUST COMPANY, A CORPORATION

No. 6833

205 THOMAS W. MILLER, AS ALIEN PROPERTY CUSTODIAN,
and Frank White, as Treasurer of the United
States, petitioners

vs.

AUGUST A. BUSCH

No. 6835

THOMAS W. MILLER, AS ALIEN PROPERTY CUSTODIAN, AND
Frank White, as Treasurer of the United States, peti-
tioners

vs.

BOATMEN'S BANK, A CORPORATION

No. 6836

THOMAS W. MILLER, AS ALIEN PROPERTY CUSTODIAN, AND
Frank White, as Treasurer of the United States, peti-
tioners

vs.

LILLY BUSCH

No. 6837

UNITED STATES OF AMERICA, PETITIONER

vs.

MERCANTILE TRUST COMPANY, A CORPORATION

No. 6839

UNITED STATES OF AMERICA, PETITIONER

vs.

NORTHWESTERN TRUST COMPANY, A CORPORATION

No. 6838

UNITED STATES OF AMERICA, PETITIONER

vs.

AUGUST A. BUSCH

No. 6840

UNITED STATES OF AMERICA, PETITIONER

vs.

BOATMEN'S BANK, A CORPORATION

No. 6841

UNITED STATES OF AMERICA, PETITIONER

vs.

No. 6842

LILLY BUSCH

Motion to substitute Frederick C. Hicks, as Alien Property Custodian, in place of Thomas W. Miller, etc. Filed Oct. 31, 1925

Now comes Allen Curry, United States attorney for the eastern judicial district of Missouri, and acting for and on behalf of the United States, moves this honorable court to substitute in each of the above-named cases the name of Frederick C. Hicks, as Alien Property Custodian, instead of the name of Thomas W. Miller, as Alien Property Custodian, as now appears in said proceedings.

ALLEN CURRY,
United States Attorney.

[File endorsement omitted.]

In United States Circuit Court of Appeals

Consent and request of appellant for substitution. Filed Oct. 31, 1925

Now come Fordyce, Holliday, and White, Esquires, attorneys for the appellees in all the above-entitled causes, and consent that Frederick C. Hicks be substituted in place and stead of Thomas W. Miller, as Alien Property Custodian, and as party to all the foregoing causes, and request and consent that said causes be continued and maintained against said Frederick C. Hicks, being the successor in the office of Alien Property Custodian to said Thomas W. Miller, who resigned since these causes were instituted.

FORDYCE, HOLLIDAY & WHITE
(S. W. Fordyce, J. H. Holliday & T. W. White),
Attorneys for Appellee in the Above-Entitled Causes.

[File endorsement omitted.]

In United States Circuit Court of Appeals

Order substituting Frederick C. Hicks in the place of Thomas W. Miller. Nov. 3, 1925

Appeal from the District Court of the United States for the Eastern
District of Missouri

THOMAS W. MILLER, AS ALIEN PROPERTY CUSTODIAN, AND Frank White, as Treasurer of the United States, ap- pellants	} No. 6833
vs.	
NORTHWESTERN TRUST COMPANY, APPELLEE	

Appeal from the District Court of the United States for the Eastern
District of Missouri

THOMAS W. MILLER, AS ALIEN PROPERTY CUSTODIAN, AND Frank White, as Treasurer of the United States, ap- pellants	} No. 6834.
vs.	
MERCANTILE TRUST COMPANY, APPELLEE	

Appeal from the District Court of the United States for the Eastern
District of Missouri

THOMAS W. MILLER, AS ALIEN PROPERTY CUSTODIAN, AND Frank White, as Treasurer of the United States, ap- pellants	} No. 6835
vs.	
AUGUST A. BUSCH, APPELLEE	

Appeal from the District Court of the United States for the Eastern
District of Missouri

THOMAS W. MILLER, AS ALIEN PROPERTY CUSTODIAN, AND Frank White, as Treasurer of the United States, ap- pellants	} No. 6836
vs.	
BOATMEN'S BANK, A CORPORATION, APPELLEE	

208 Appeal from the District Court of the United States for the
Eastern District of Missouri

THOMAS W. MILLER, AS ALIEN PROPERTY CUSTODIAN, AND Frank White, as Treasurer of the United States, ap- pellants	} No. 6837
vs.	
LILLY BUSCH, APPELLEE	

In these causes the United States attorney for the eastern district of Missouri, acting for and on behalf of the United States, moves this court that the name of Frederick C. Hicks, as Alien Property Custodian, be substituted instead of the name of Thomas W. Miller, as Alien Property Custodian, and counsel for the appellees consenting thereto and requesting that such substitution be made,

It is therefore, ordered by this court that in each of these causes Frederick C. Hicks, as Alien Property Custodian, successor in the office of Alien Property Custodian to said Thomas W. Miller, resigned, be, and he is hereby, substituted as one of the appellants in the place and stead of said Thomas W. Miller, as Alien Property Custodian, and that these causes proceed henceforth as though said Thomas W. Miller had not resigned.

In United States Circuit Court of Appeals, Eighth Circuit

Clerk's certificate

I, E. E. Koch, clerk of the United States Circuit Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing contains the transcript of the record from the District Court of the United States for the Eastern District of Missouri, as printed under
209 my supervision and at the direction of the Attorney General, except that the full captions, titles, and endorsements are omitted in pursuance of the rules of the Supreme Court of the United States, in a certain cause in said Circuit Court of Appeals wherein Frederick C. Hicks, as Alien Property Custodian et al., were appellants and Mercantile Trust Company, a corporation, was appellee, No. 6834, as full, true, and complete as the original of the same remains on file in my office.

In testimony whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit, at office in the city of St. Louis, Missouri, this sixth day of November, A. D. 1925.

[Seal
United States
Circuit Court
of Appeals
Eighth Circuit.]

[SEAL.]

E. E. KOCH,
*Clerk of the United States Circuit Court
of Appeals for the Eighth Circuit.*

210 Supreme Court of the United States

Order allowing certiorari. Filed November 23, 1925

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Eighth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

INDEX

	Page
Previous Decision in this case.....	1
Grounds for the Jurisdiction of this Court.....	1
Statement of the Case.....	3
Assigned Errors Intended to be Urged.....	14
Argument.....	16
I. The Supreme Court of the District of Columbia was without jurisdiction to entertain this suit because it involved an adjudication as to the conduct and obligations of a foreign sovereign.....	16
II. There is no evidence to prove that there is in the Treasury of the United States any money which at the time of seizure belonged to the Imperial German Government or that the Alien Property Custodian has in his possession property out of which the claim of the appellee herein may be paid.....	17
III. The appellants, as officers of the United States, may assert the claims of the United States against funds in the Treasury of the United States, out of which the claimant in a suit under Section 9 of the Trading with the Enemy Act also seeks to recover.....	18
IV. The court erred in striking out the separate defenses to the bill of complaint which set up the claims of the United States against any money which may be held to have been the money of the Imperial German Government at the time of seizure.....	20
Conclusion.....	23

TABLE OF CASES

<i>Banco Mexicano v. Miller</i> , 263 U. S. 591.....	3, 19
<i>Behn, Meyer & Co., Ltd., v. Miller</i> , 266 U. S. 457.....	3
<i>Compagnie Internationale de Produits, etc., v. Miller</i> , 266 U. S. 473.....	3
<i>Dixon v. United States</i> , 1 Brockenbrough, 177, 181.....	23
<i>Dollar Savings Bank v. United States</i> , 86 U. S. (18 Wall.) 227.....	20
<i>Guaranty Trust Co. v. Title Guaranty Co.</i> , 224 U. S. 152.....	22
<i>Lewis, Trustee, v. United States</i> , 92 U. S. 618.....	22
<i>Müller v. Robertson</i> , 266 U. S. 243.....	19
<i>Res Publica v. Suceers</i> , 1 Dall. 41, 44.....	23

II

	Page
<i>Swiss National Insurance Co., Ltd., v. Miller</i> , 267 U. S. 42-----	3
<i>United States v Herron</i> , 20 Wall. 251, 260-----	22
<i>United States v. Maurice</i> , 26 Fed. Cas. No. 15747-----	23
<i>United States v. Tingey</i> , 30 U. S. 115, 127-----	23

TABLE OF STATUTES

Trading with the Enemy Act, 40 Stat. L. 411 :	
Section 2, c. 106, 40 Stat. L. 412-----	23
Section 9 as amended March 4, 1923, c. 285, 42 Stat. L. 1511-----	2, 3
Section 12, c. 106, 40 Stat. L. 423-----	18
Judicial Code, Section 250, c. 231, 36 Stat. L. 1159-----	2

In the Supreme Court of the United States

OCTOBER TERM, 1925

No. 423

FRANK WHITE, AS TREASURER OF THE UNITED
States, and Frederick C. Hicks, as Alien Prop-
erty Custodian, appellants

v.

THE MECHANICS SECURITIES CORPORATION, APPELLEE

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT
OF COLUMBIA

BRIEF ON BEHALF OF FRANK WHITE, AS TREASURER OF
THE UNITED STATES, AND FREDERICK C. HICKS, AS
ALIEN PROPERTY CUSTODIAN

PREVIOUS DECISION IN THIS CASE

The decision of the Court of Appeals of the District of Columbia in this case is reported in 4 Fed. (2d) 624. This decision of the Court of Appeals, however, is a *per curiam* decision based upon the decision of the Court in the case of *White against Securities Corporation General*, reported in 4 Fed. (2d) 619.

GROUND FOR THE JURISDICTION OF THIS COURT

This case is before this Court upon an appeal from a judgment of the Court of Appeals of

the District of Columbia entered on March 2, 1925 (R. 37), which affirmed a final decree of the Supreme Court of the District of Columbia entered on March 3, 1924 (R. p. 22). The suit purported to be instituted in the Supreme Court of the District of Columbia pursuant to the provisions of Section 9 of the Trading with the Enemy Act as amended March 4, 1923. (c. 285, 42 Stat. L. 1511.) The final decree of the Supreme Court of the District of Columbia directed the Treasurer of the United States to pay to the plaintiff the sum of \$500,000, with interest at the rate of six per centum per annum from July 14, 1919, until paid, out of funds in the Treasury of the United States which the Court found were at the time of seizure by the Alien Property Custodian funds of the Imperial German Government.

The appeal to this Court from the judgment of the Court of Appeals of the District of Columbia has been prosecuted pursuant to paragraphs first, fifth, and sixth of Section 250 of the Judicial Code. (c. 231, 36 Stat L. 1159.)

The right of appeal from a judgment of the Court of Appeals of the District of Columbia in a case arising under the Trading with the Enemy Act has never been raised in this Court, but several cases have been brought to this Court under such circumstances by appeals from the judgments of the Court of Appeals of the District of Columbia, and there has been no intimation that there is any doubt about the propriety of

such appeals. See *Behn, Meyer & Co., Ltd., v. Miller*, 266 U. S. 457; *Banco Mexicano v. Miller*, 263 U. S. 591; *Swiss National Insurance Co., Ltd., v. Miller*, 267 U. S. 42; and *Compagnie Internationale de Products, etc., v. Miller*, 266 U. S. 473.

STATEMENT OF THE CASE

The statement of the case in this cause will be largely a statement of the allegations of the pleadings filed therein, since with one minor exception there was no evidence introduced at the hearing of the cause.

The bill of complaint (R. 1) purports to have been filed under Section 9 of the Trading with the Enemy Act as amended March 4, 1923 (c. 285, 42 Stat. L. 1511). It is alleged therein that the plaintiff is a corporation organized under the laws of the State of New York, and that the defendants are, respectively, Treasurer of the United States and Alien Property Custodian.

The principal allegation upon which the plaintiff in the court below relied for recovery was the allegation that prior to October 6, 1917, the Imperial German Government owed to the Mechanics & Metals National Bank, the assignor of the plaintiff, the sum of \$500,000, evidenced by two six per cent Treasury notes, one of the par value of \$200,000, dated May 6, 1916, and one of the par value of \$300,000, dated May 24, 1916, all of which notes were payable on April 1, 1917, and were purchased by plaintiff's assignor for value

prior to the declaration of war between the United States and Germany and prior to October 6, 1917. It is further alleged that the maturity of the notes was extended to April, 1918.

Paragraph 8 of the bill of complaint (R. 8) alleges that the Alien Property Custodian now has in his possession or to his credit in the Treasury of the United States funds of the Imperial German Government which were paid and delivered to him under the provisions of the Trading with the Enemy Act as amended, and which are available by law sufficient to pay the entire indebtedness, both principal and past due interest, owing to the plaintiff.

The plaintiff prays that defendants be ordered to pay the said sum of \$500,000 with interest thereon.

The defendants filed a motion to dismiss (R. 4) the bill of complaint upon several grounds, all of which will be discussed hereafter, and which appear in the record on pages 4 and 5. After argument the motion to dismiss was overruled.

After the overruling of the motion to dismiss the defendants answered the bill of complaint (R. 5ff.). This answer admitted the incorporation and residence of the plaintiff and the official character of the defendants. Concerning the ownership of the notes of the Imperial German Government by the plaintiff, the defendants stated that they had no knowledge or information sufficient to form a belief, and therefore demanded

strict proof thereof. As to the allegations of paragraph 8 of the bill of complaint, which allege that the Custodian has in his possession or to his credit in the Treasury of the United States funds of the Imperial German Government, the defendants made the following answer (R. 6 and 7):

Answering the averments of paragraph numbered 8 of the bill of complaint, these defendants separately and severally say that the Alien Property Custodian, acting under and pursuant to the terms and provisions of the Trading with the Enemy Act, the amendments thereto, and the proclamations and executive orders issued thereunder, after investigation, determined that the Imperial German Government was an enemy within the purview and meaning of the said Act, the amendments thereto, and the proclamations and executive orders issued thereunder, and that certain moneys were owing or belonging to, held for, by, on account of, and for the benefit of the said enemy. Thereupon the Alien Property Custodian required the said moneys and other property to be conveyed, transferred, assigned, delivered, and/or paid to him, to be by him held, administered, and accounted for as provided by law. Thereafter the demands of the Alien Property Custodian were fulfilled and he received certain moneys, pursuant to the said demand, and paid the same to the Treasurer of the United States, in accordance with

the provisions of the Trading with the Enemy Act. The amount of said moneys received as aforesaid is, at the present time, approximately five hundred fifteen thousand five hundred seventy-one dollars (\$515,571) and is held by the Alien Property Custodian in trust No. 555.

Further answering said paragraph, these defendants separately and severally say that the Alien Property Custodian, acting under and pursuant to the terms and provisions of the Trading with the Enemy Act, the amendments thereto, and the proclamations and executive orders issued thereunder, after investigation, determined that certain money was by Lee, Higginson & Company, of Boston, Massachusetts, in the approximate amount of five million dollars (\$5,000,000) held for, by, on account of, and for the benefit of an unknown enemy. Thereupon the Alien Property Custodian required the said money to be paid to him. Thereafter the demand of the Alien Property Custodian was fulfilled, and he received as aforesaid the said sum of five million dollars (\$5,000,000), which he paid to the Treasurer of the United States, in accordance with the terms and provisions of the Trading with the Enemy Act, and the said money was thereupon placed to the credit of unknown enemy No. 1, in trust No. 9322. Thereafter and to wit, on or about the 8th day of March, 1923, the Alien Property Custodian determined that two million two hundred thousand dollars

(\$2,200,000) of the five million dollars (\$5,000,000) received as aforesaid was at the time of the receipt thereof by the Alien Property Custodian, held for, by, on account of, and for the benefit of the Imperial German Government. Thereupon the Alien Property Custodian directed the Treasurer of the United States to transfer from trust No. 9322 the sum of two million two hundred thousand dollars (\$2,200,000), and to place the same to the credit of the Imperial German Government, opening a special account designated "Trust 555, Special." Thereafter the Treasurer of the United States, pursuant to the said instructions, so transferred the said two million two hundred thousand dollars (\$2,200,000) to said trust.

Further answering said paragraph these defendants say that they have no further knowledge, information, or belief with respect to the ownership of any of the said money received as aforesaid by the Alien Property Custodian, and this court must determine out of what, if any, of the money held by the Alien Property Custodian, and/or the Treasurer of the United States, any claim which these defendants may establish must be paid.

One of the principal controversies of the suit revolves around the effect of this answer.

Besides answering the specific allegations of the bill of complaint, the defendants set up in their answer certain separate and several defenses to

the suit. (R. 7ff.) In these defenses it is alleged that the defendants are officers of the United States of America and are sued as such; that the suit is against the United States of America, which is a body politic; and that the Imperial German Government, or its successor or successors, is an enemy within the purview and meaning of the Trading with the Enemy Act as amended. It is then alleged that the President of the United States, on April 6, 1917, by proclamation declared that a state of war existed between the United States and Germany, and that subsequent to the said date and until the 2nd day of July, 1921, a state of war existed between the two countries, and for a large portion of such period the United States of America, its officers and agencies were actively engaged in the prosecution of the said war; that on the 11th day of November, 1918, an armistice was signed by the United States of America and its allies on the one side and the Government of Germany on the other, and that subsequent to that date the military forces of the United States occupied certain territory in Germany, and that said occupation of the territory of Germany by the military forces of the United States began on or about the 18th day of December, 1918. It is then alleged that during the occupation of the territory of Germany the United States of America expended and laid out large sums of money in the maintenance of the

military forces occupying the territory, which sum amounted to \$255,525,298.45 (R. 8), and that Germany has agreed to reimburse the United States of America for that amount.

It is further alleged that at various times since December 18, 1918, accounts covering the expenses of the maintenance of the military forces of the United States in the occupation of Germany have been stated between Germany and the United States of America, the last of said statements of account having been made on the 31st day of January, 1923, the said statements of account having been made, rendered, and presented to the Reparations Commission created and established by the Treaty of Versailles, and which said Commission, so established and created, was at all times recognized by Germany as the proper body to which accounts should be rendered and presented.

It is further alleged that being so indebted to the United States, as aforesaid, Germany then and there undertook to pay to the United States the aforementioned sum of \$255,525,298.45, but that Germany has not paid the said sum, nor any part thereof, and the entire sum now remains due and owing from Germany to the United States of America.

As a second separate defense (R. 9) to the bill of complaint the defendants allege that between April 6, 1917, and the 2nd day of July, 1921, the

United States of America requisitioned, seized, and chartered certain vessels belonging to Dutch nationals, and also certain vessels of American registry, which were then and there in ports of the United States, and also seized other vessels formerly owned by subjects of Germany, all of which vessels so requisitioned, seized, and/or chartered by the United States Government were, subsequent to the seizure thereof and during said period, damaged and/or destroyed by Germany, and that by reason of such destruction of said vessels the United States of America suffered and sustained damages in the sum of \$50,149,265.97; that thereafter, and prior to the commencement of this suit, Germany agreed to pay to the United States of America, for damages sustained by reason of the destruction of said vessels, the said sum of \$50,149,265.97.

It is further alleged that between the 6th day of April, 1917, and July 2, 1921, certain vessels which were then and there the property of and owned by the United States of America were destroyed by Germany, and that said vessels were of the reasonable worth and value of \$12,144,095.27; that by reason of the destruction of said vessels by Germany the United States of America suffered and sustained damages in the said sum of \$12,144,095.27, and that Germany has agreed to reimburse and pay to the United States the said sum of money for and on account of the destruction of said property.

It is further alleged that by reason of the wrongful acts of Germany in destroying and damaging all the vessels mentioned above, the United States has been damaged in the amount of \$62,293,361.27, for all of which damages Germany has agreed to reimburse the United States and to pay to the United States of America sums of money equal to the amount of said damage, but that Germany has not paid the said sum nor any part thereof, and the entire sum now remains due and owing from Germany to the United States.

As a third separate (R. 10) defense to the suit the answer sets forth that on or about the 4th day of August, 1914, a state of war became flagrant between Germany on the one side and France, England, and their allies on the other, and that after the outbreak of the said war the United States of America, in accordance with certain acts of Congress passed for the purpose, issued for good consideration certain policies of insurance upon certain vessels and their cargoes, and also certain policies of insurance upon the lives of the crews of the said vessels; that during the time that the said policies were in full force and effect the said vessels were destroyed and the said persons upon whose lives the said insurance was issued were killed by Germany; that by reason of the said destruction of the said vessels and their cargoes, and the killing of the said persons, the United States of America became liable to pay to

the owners of the vessels and the cargoes, and to the beneficiaries of the policies of insurance upon the lives of the said persons, large sums of money, which are specifically set forth in exhibits; that the United States of America paid the said sums of money, and that upon the payment of the money the United States became and was subrogated to all the rights of the said owners and cargoes against Germany; that by reason of the premises a right has accrued to the United States against Germany for the payment to the United States of America of the sum of \$29,304,552.85.

It is further alleged that by reason of the payment by the United States of the said insurance the United States has been damaged in the said amount of \$29,304,552.85, and that Germany has not paid the said sum nor any part thereof, and the entire sum remains due and owing from Germany to the United States of America.

By reason of all the allegations set forth in the three separate defenses to the answer defendants claim that the United States is entitled to receive payment of the sums mentioned out of any money of the Imperial German Government which may be in the possession of the Custodian or the Treasurer.

The answer prays (R. 11):

- (1) That the bill of complaint be dismissed;
- (2) That the Court adjudge and decree that the United States is entitled to retain any and all moneys now in the possession of the Treasurer of

the United States which is now held in the name of the Imperial German Government to be applied upon the debt due by Germany to the United States of America; and

(3) For general relief.

The plaintiff filed a motion to strike out (R. 20) the allegations of paragraphs 11 to 42, inclusive, of the bill of complaint, which paragraphs were the paragraphs setting forth the separate and several defenses of the defendants. This motion after argument was granted by the court.

Thereafter the case came on for hearing upon the bill and so much of the answer as was not stricken from the record. The only evidence introduced at the hearing was a stipulation entered into between the parties (R. 21), which merely admitted the genuineness of the notes upon which suit was brought, and provided that in the event a final decree was entered such decree should not provide for the payment of any interest by the defendants between the 6th day of April, 1917, and the 14th day of July, 1919. Upon the bill and answer as filed and the said stipulation a final decree was entered in the case (R. 22), which established a debt in favor of the plaintiff against the Imperial German Government in the sum of \$500,000, and ordered the Treasurer to pay the indebtedness out of money in his possession upon the surrender of the notes.

ASSIGNED ERRORS INTENDED TO BE USED

The appellants urge the first and second and the fifth to the seventeenth assignments of error, inclusive (R. 39 and 40), to wit:

(1) The court erred in ordering, adjudging, and decreeing that the final decree entered in this case in the Supreme Court of the District of Columbia on the 3rd day of March, 1924, be affirmed.

(2) The court erred in not ordering, adjudging, and decreeing that the final decree entered in the case in the Supreme Court of the District of Columbia on the 3rd day of March, 1924, be reversed.

(5) The court erred in adjudging and deciding that the Supreme Court of the District of Columbia had jurisdiction of the subject matter of the suit.

(6) The court erred in not adjudging and deciding that the Supreme Court of the District of Columbia was without jurisdiction of the subject matter of the suit.

(7) The court erred in deciding and adjudging that it is clear from the terms of the trading with the enemy act that a suit brought under it is not in the nature of a creditor's bill calling for a marshaling of claimants, nor does it give any preference to one creditor over another, or call for a sharing pro rata with other creditors in the funds to which the claims are made.

(8) The court erred in deciding and adjudging that there was competent evidence and sufficient in character to establish a

prima facie case as to the existence of funds seized by the Imperial German Government and held in the Treasury of the United States against which the claims of the plaintiff could be asserted.

(9) The court erred in deciding and adjudging that the transfer of the \$2,200,000 to trust No. 555-Special, "Imperial German Government," on March 8, 1923, was a determination by the Alien Property Custodian of the enemy ownership of the fund.

(10) The court erred in deciding and adjudging that the transfer of the \$2,200,000 to trust No. 555-Special, "Imperial German Government," on March 8, 1923, amounted to a finding, after investigation, that the fund should be held "for, by, on account of and on behalf of, or for the benefit of the Imperial German Government."

(11) The court erred in deciding and adjudging that there was nothing in the record to indicate that the ownership of the fund in question up to March 8, 1923, had been specifically determined.

(12) The court erred in deciding and adjudging that the United States is not a "person" as mentioned in section 9 of the Trading with the Enemy Act, or such a party as can take advantage of the provisions thereof.

(13) The court erred in deciding and adjudging that the United States has no such interest in the fund in question as can be affected by the present suit.

(14) The court erred in deciding and adjudging that the fund in question has been set aside by the act for the satisfaction of such claims as may be legally brought against it by claimants other than the United States.

(15) The court erred in not adjudging, ordering, and decreeing that the Supreme Court of the District of Columbia erred in granting the motion of the plaintiff to strike out the affirmative defenses set up in paragraphs 11 to 40, both inclusive, of the answer filed on behalf of the defendants.

(16) The court erred in not deciding, adjudging, and decreeing that the facts set forth in paragraphs 11 to 42, both inclusive, of the answer filed on behalf of the defendants constituted a good and valid defense to the suit of the plaintiff.

(17) The court erred in not adjudging, ordering, and decreeing that the decree of the Supreme Court of the District of Columbia entered in the case on the 3rd day of March, 1924, be reversed and the case remanded to that court with instructions that the bill of complaint be dismissed.

ARGUMENT

I

The Supreme Court of the District of Columbia was without jurisdiction to entertain this suit because it involved an adjudication as to the conduct and obligations of a foreign sovereign.

This case is one of the group of cases in which are found cases Nos. 424, 425, 430, and 431, in

which a separate brief has been filed. This point and the subject matter thereof are precisely the same as Point I of the brief filed for cases Nos. 424, 425, 430, and 431. To avoid repetition the Court's attention is respectfully directed to the argument contained under Point I of that brief.

II

There is no evidence to prove that there is in the Treasury of the United States any money which, at the time of seizure, belonged to the Imperial German Government or that the Alien Property Custodian has in his possession property out of which the claim of the appellee herein may be paid

Paragraph 8 of the bill of complaint in this case is as follows:

That the Alien Property Custodian now has in his possession, or to his credit in the Treasury of the United States, funds of the Imperial German Government which were paid and delivered to him under the provisions of said trading with the enemy act, as amended, and which are available by law, sufficient to pay the entire indebtedness, both principal and past due interest owing to complainant.

The answer filed on behalf of the Custodian and the Treasurer to this paragraph of the bill of complaint has been set forth in full heretofore on pages 5ff. Without introducing any further evidence to prove that there was in the Treasury of the United States money which at the time of seizure belonged to the Imperial German Govern-

ment, and out of which the claim of the appellee could be paid, the appellee relied entirely upon the statements made in the answer of the defendants. Since this answer was introduced into evidence as proof of the ownership of the Imperial German Government of the money involved in cases Nos. 424, 425, 430, and 431 the same question of law arises as to the effect of an attempt by the Alien Property Custodian to direct the Treasurer of the United States to transfer from one account to another money which has been paid into the Treasury of the United States pursuant to Section 12 of the Trading with the Enemy Act, and the same arguments will apply as were set forth under Point II of the brief in cases Nos. 424, 425, 430, and 431. The Court is, therefore, respectfully referred to that portion of the other brief. The only difference in this case is that there is no evidence in the case to show the ownership of the money in the Imperial German Government at the time of seizure, whereas in the other cases there were introduced into evidence besides the answer in this case certain letters and entries from the books of the Treasury.

III

The appellants, as officers of the United States, may assert the claims of the United States against funds in the Treasury of the United States, out of which the claimant in a suit under Section 9 of the Trading with the Enemy Act, also seeks to recover

The appellee moved to strike out the separate and several defenses which set up the claims of

the United States. (R. 7-11.) Under these circumstances all the facts set up in the separate and several defenses are admitted to be, and must be, taken as true. This being the case the Court has before it the fact that Germany is indebted to the United States in certain large amounts of money, and has agreed to reimburse the United States for these amounts. These defendants are insisting that *if* the Court finds that this money did, at the time of seizure, belong to the Imperial German Government the United States is entitled to have its claim recognized as well as the claim of the plaintiff.

In the case of *Banco Mexicano v. Miller*, 263 U. S. 591, this Court held that a suit under Section 9 of the Trading with the Enemy Act to collect a debt out of property in the possession of the Alien Property Custodian, or money in the Treasury of the United States, is in effect a suit against the United States. The present suit is precisely the same sort of case as the *Banco Mexicano* case. If, therefore, the *Banco Mexicano* suit was in effect a suit against the United States, the present suit must likewise be a suit against the United States. See also *Miller v. Robertson* (266 U. S. 243). This being the case, the defendants, as officers of the United States, are entitled to raise any claims which the United States as such would be entitled to raise.

IV

The Court erred in striking out the separate defenses to the bill of complaint which set up the claims of the United States against any money which may be held to have been the money of the Imperial German Government at the time of seizure

These defendants contend that it is a general principle of law that the United States is not bound by any provisions of a statute with respect to its claims, unless it is specifically mentioned in the statute. This Court has so held. In *Dollar Savings Bank v. United States*, 86 U. S. (18 Wall.) 227, an objection was raised to the form of action which the United States adopted in suing for the recovery of taxes which were due. The United States brought an action of debt against the bank, and it was insisted on behalf of the bank that the statute provided a method of suit and the United States must comply with the provisions of the statute. In answering this contention this Court said:

It must also be conceded to be a rule of the common law in England, and it is in Pennsylvania and many of the other States, that where a statute creates a right and provides a particular remedy for its enforcement, the remedy is generally exclusive of all common-law remedies.

But it is important to notice upon what the rule is founded. The reason of the rule is that the statute, by providing a particular remedy, manifests an intention to prohibit other remedies, and the rule, therefore,

rests upon a presumed statutory prohibition. It applies and it is enforced when anyone to whom the statute is a rule of conduct seeks redress for a civil wrong. He is confined to the remedy pointed out in the statute, for he is forbidden to make use of any other. But by the Internal Revenue Law the United States are not prohibited from adopting any remedies for the recovery of a debt due to them which are known to the laws of Pennsylvania. The prohibitions, if any, either express or implied, contained in the exactment of 1866, are for others, not for the government. They may be obligatory upon tax collectors. They may prevent any suit at law by such officers or agents. But they are not rules for the conduct of the State. It is a familiar principle that the King is not bound by any act of Parliament unless he be named therein by special and particular words. The most general words that can be devised (for example, any person or persons, bodies politic or corporate) affect not him in the least if they may tend to restrain or diminish any of his rights and interests. *He may even take the benefit of any particular act, though not named.* The rule thus settled respecting the British Crown is equally applicable to this government, and has been applied frequently in the different States, and particularly in the Federal Courts. It may be considered as settled that so much of the royal prerogatives as belonged to the King in his capacity of *parens patriae*, or

universal trustee, enters as much into our political state as it does into the principles of the British constitution. (Italics supplied.)

This case represents the general proposition of law that the United States is not bound by the limitations of its statutes. The same thing has been held in other circumstances. See *Guaranty Co. v. Title Guaranty Co.*, 224 U. S. 152, *United States v. Herron*, 20 Wall. 251, 260, and *Lewis, Trustee, v. United States*, 92 U. S. 618.

With these cases in mind it is the contention of the appellants that if the United States has in its possession a large amount of money which, prior to seizure, belonged to the Imperial German Government, that if the Imperial German Government is indebted to the United States in various amounts, the United States can not be compelled to pay out all such money to individual claimants against Germany without being permitted to assert its own claims against such funds. Not only on general principles is the United States entitled to have its claims considered in the distribution of any money which the Court may hold was at the time of seizure the money of the Imperial German Government, but a proper construction of the Trading with the Enemy Act will establish the same result.

Section 9 of the Trading with the Enemy Act provides that "any person not an enemy or ally of enemy," after filing notice of claim as provided in the Act, may secure the payment of an

indebtedness owing from an enemy out of property of the enemy which has been seized, or may bring suit to compel the payment of such indebtedness provided the Alien Property Custodian holds property of the debtor or there is money in the Treasury of the United States which at the time of seizure belonged to the debtor.

Section 2 of the Act (c. 106, 40 Stat. L. 412) defines the word "person" as follows:

The word "person" as used herein shall be deemed to mean an individual, partnership, association, company, or other unincorporated body of individuals, or corporation, or *body politic*. (Italics supplied.)

The United States is both a body politic and a corporation. (See *United States v. Maurice*, 26 Fed. Cas. Nos. 15747; *United States v. Tingey*, 30 U. S. 115, 127; *Dixon v. United States*, 1 Brockenbrough, 177, 181; *Res Publica v. Sweers*, 1 Dallas, 41, 44.

CONCLUSION

From the foregoing it appears:

(1) That the Court was without jurisdiction to entertain the present suit because it would require the Court to pass upon the acts and conduct of a foreign sovereign, which are subject only to negotiations between the political branches of the two governments.

(2) There is no evidence to show that there is in the possession of the Alien Property Custodian or in the Treasury of the United States any property or money which at the time of seizure was the

money or property of the Imperial German Government, the alleged debtor.

(3) The separate and several defenses raised by the Alien Property Custodian and the Treasurer of the United States in their answer should not have been stricken out since they, as officers of the United States, may set up claims of the United States against Germany, and have those claims paid out of any funds of Germany which the Court may determine are now held in the Treasury of the United States.

The decree of the Court of Appeals of the District of Columbia should be reversed.

WILLIAM D. MITCHELL,
Solicitor General,

IRA LLOYD LETTS,
Assistant Attorney General,
DEAN HILL STANLEY,

Special Assistant to the Attorney General,
Solicitors for Frederick C. Hicks, as Alien
Property Custodian, and Frank White,
as Treasurer of the United States.

OCTOBER 12, 1925.



TABLE OF CONTENTS

	Page
Previous decision in these cases.....	2
Grounds for the jurisdiction of this court.....	2
Statement of the case.....	4
Stipulation as to printing of records.....	4
The pleadings.....	5
The evidence.....	8
Suggestion as to the rights of the United States of America.....	15
Assigned errors intended to be urged.....	20
Argument.....	24
I. The Supreme Court of the District of Columbia was without jurisdiction to entertain these suits, because they involved an adjudication as to the conduct and obligations of a foreign sovereign.....	24
II. There is no evidence to prove that there is in the Treasury of the United States any money which, at the time of seizure, belonged to the Imperial German Government, or that the Alien Property Custodian has in his possession property out of which the claims of the appellees herein may be paid.....	37
III. The court erred in granting the motion to strike out the suggestion filed on behalf of the United States of America.....	63
(1) The United States may assert its rights in the case by means of a suggestion to the Court by the Attorney General.....	63
(2) The United States is a "person" within the meaning of section 9 of the trading with the enemy act and is therefore a proper claimant under that section.....	66
(3) Assuming, but not admitting, that the United States is not a claimant under section 9, it is nevertheless entitled in this proceeding to assert its rights and to have them passed upon.....	68
Conclusion.....	70

TABLE OF CASES

<i>Adriatic, The</i> , 258 Fed. 902.....	28
<i>American Banana Co. v. United Fruit Co.</i> , 213 U. S. 347.....	31, 32
<i>Banco Mexicano v. Miller</i> , 263 U. S. 591.....	3, 67
<i>Beers v. State of Arkansas</i> , 61 U. S. (20 How.) 527.....	28

II

	Page
<i>Behn, Meyer & Co., Ltd., v. Miller</i> , 266 U. S. 457.....	3
<i>Central Union Trust Co. v. Garvan</i> , 254 U. S. 554.....	54
<i>Columbia Brewing Co. v. Miller</i> , 281 Fed. 289.....	59
<i>Compagnie Internationale de Produits, etc., v. Miller</i> , 266 U. S. 473.....	4
<i>Commercial Trust Co. v. Miller</i> , 281 Fed. 804, aff. 262 U. S. 51.....	58
<i>Debs, In re</i> , 158 U. S. 564.....	63
<i>Dixon v. United States</i> , 1 Brockenbrough, 177, 181.....	67
<i>Dollar Savings Bank v. United States</i> , 86 U. S. (19 Wall.) 227.....	68
<i>Exchange, The</i> , 7 Cranch, 116.....	4, 64
<i>Ex Parte Gans</i> , 17 Fed. 471.....	35
<i>Ex Parte Riebeling</i> , 70 Fed. 310.....	35
<i>French Republic v. Inland Navigation Co. et al.</i> , 263 Fed. 410.....	28
<i>Garvan v. Bonds</i> , 265 Fed. 477, 481.....	59
<i>Garvan v. Shares of International Agricultural Corporation</i> , 276 Fed. 206, aff. 283 Fed. 746.....	59
<i>Gordon v. United States</i> , 117 U. S. 697.....	35
<i>Guaranty Trust Co. v. Title Guaranty Co.</i> , 224 U. S. 152.....	70
<i>Hassard v. United States of Mexico</i> , 29 Misc. 511, aff. 46 App. Div. 623 and 173 N. Y. 645.....	28, 33
<i>Hayburn's case</i> , 2 Dall. 409.....	35
<i>Heckman v. United States</i> , 224 U. S. 413.....	63
<i>Henkels v. Miller</i> , 4 Fed. (2d) 988.....	48
<i>Hewitt v. Speyer</i> , 250 Fed. 367.....	37
<i>Kahn v. Garvan</i> , 263 Fed. 909.....	59
<i>Kingdom of Roumania v. Guaranty Trust Co. of New York</i> , 250 Fed. 341.....	28
<i>Lewis, Trustee, v. United States</i> , 92 U. S. 618.....	70
<i>Maipo, The</i> , 252 Fed. 627.....	28
<i>Maipo, The</i> , 259 Fed. 367.....	37
<i>Molina v. Comision Reguladora de Necardo de Henequen</i> , 92 N. J. L. 38.....	28
<i>Oetjen v. Central Leather Co.</i> , 246 U. S. 297.....	28
<i>Res Publica v. Smeers</i> , 1 Dall. 41, 44.....	67
<i>Ricaud v. American Metal Co.</i> , 246 U. S. 304.....	31
<i>Salamandra Insurance Co. v. New York Life Insurance Co., Trust Co., et al.</i> , 254 Fed. 852.....	59
<i>Simon v. Miller</i> , 298 Fed. 520.....	59
<i>Stanley v. Schwalby</i> , 147 U. S. 508.....	4, 65
<i>Stoeck v. Wallace</i> , 255 U. S. 239.....	58
<i>Swiss National Insurance Co., Ltd., v. Miller</i> , 267 U. S. 42.....	3
<i>Twycross v. Dreyfus</i> , 36 L. T. R. (N. S.) 752.....	35
<i>Underhill v. Hernandez</i> , 168 U. S. 250.....	29, 34
<i>United States v. Beebe</i> , 127 U. S. 338.....	63
<i>United States v. Ferreira</i> , 54 U. S. (13 How.) 39.....	35
<i>United States v. Hay</i> , 20 App. D. C. 576.....	35
<i>United States v. Herron</i> , 20 Wall. 251, 260.....	70
<i>United States v. Lee</i> , 106 U. S. 196.....	4, 65

III

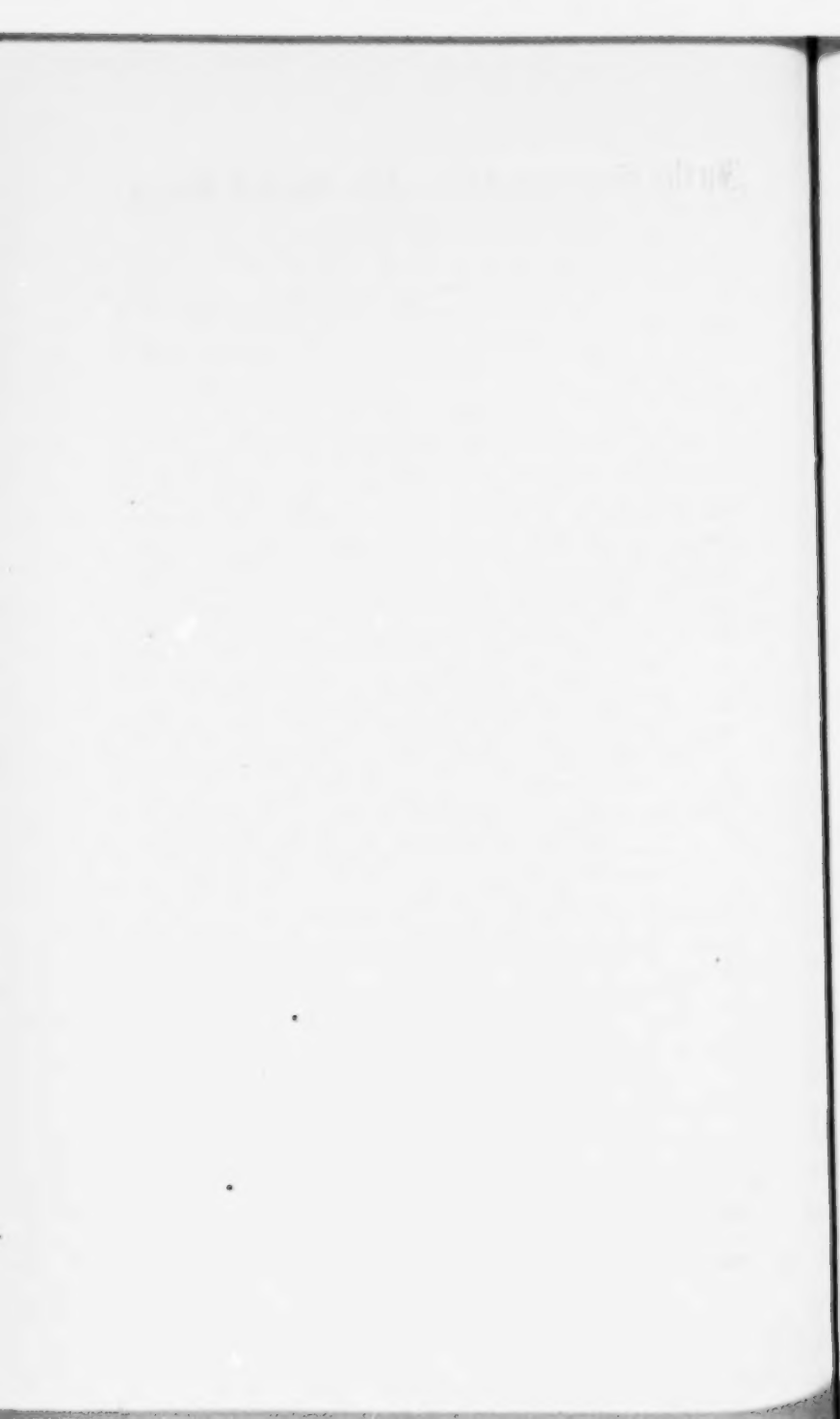
	Page
<i>United States v. Maurice</i> , 26 Fed. Cas. No. 15,747-----	67
<i>United States v. Queen et al.</i> , 105 Fed. 269-----	35
<i>United States v. Tingey</i> , 30 U. S. 115, 127-----	67
<i>United States v. Todd</i> , 54 U. S. (13 How.) 51 (note)-----	35
<i>Wulfsohn v. Russian Socialist Federated Soviet Republic</i> , 234 N. Y. 372-----	36

TEXTS

Harvard Law Review, vol. 38, pp. 599, 603, 604-----	35
---	----

TABLE OF STATUTES

Trading with the enemy act (c. 106, 40 Stat. L. 411)---	
Sec. 2 (c. 106, 40 Stat. L. 411)-----	27
Sec. 7c (c. 106, 40 Stat. L. 418)-----	50
Sec. 7c, as amended Nov. 4, 1918 (c. 201, 40 Stat. L. 1020)---	51
Sec. 9, as amended June 5, 1920 (c. 241, 41 Stat. L. 977)---	3, 24
Sec. 9, as amended Mar. 4, 1923 (c. 285, 42 Stat. L. 1511)---	3, 24
Sec. 12 (c. 106, 40 Stat. L. 423)-----	46
Judicial Code, sec. 250 (c. 231, 36 Stat. L. 1159)-----	3



In the Supreme Court of the United States

OCTOBER TERM, 1925

No. 424

THE UNITED STATES OF AMERICA, APPELLANT
v.

SECURITIES CORPORATION GENERAL

No. 425

FRANK WHITE, TREASURER OF THE UNITED STATES,
and Frederick C. Hicks, Alien Property Custodian, appellants

v.

SECURITIES CORPORATION GENERAL

No. 430

THE UNITED STATES OF AMERICA, APPELLANT
v.

THE EQUITABLE TRUST COMPANY OF NEW YORK

No. 431

FREDERICK C. HICKS, ALIEN PROPERTY CUSTODIAN,
and Frank White, Treasurer of the United States, appellants

v.

THE EQUITABLE TRUST COMPANY OF NEW YORK

APPEALS FROM THE COURT OF APPEALS OF THE DISTRICT
OF COLUMBIA

BRIEF ON BEHALF OF THE UNITED STATES OF AMERICA,
FREDERICK C. HICKS, AS ALIEN PROPERTY CUSTODIAN,
AND FRANK WHITE, AS TREASURER OF THE
UNITED STATES

PREVIOUS DECISION IN THESE CASES

The opinion of the Court of Appeals of the District of Columbia in these cases is reported in 4 Fed. (2nd) 619.

GROUND FOR THE JURISDICTION OF THIS COURT

These cases are before this Court upon appeals from judgments of the Court of Appeals of the District of Columbia entered on March 2, 1925. (R. p. 28 in No. 424, p. 32 in No. 425, p. 28 in No. 430, and p. 26 in No. 431.) In cases Nos. 424 and 430 the judgment of the Court of Appeals of the District of Columbia dismissed appeals taken by the United States of America in those cases from orders entered by the Supreme Court of the District of Columbia on April 30, 1924, and May 21, 1924, respectively (R. p. 17 in No. 424 and R. p. 18 in No. 430), which granted a motions to strike out suggestions filed on behalf of the United States of America in cases Nos. 425 and 431, respectively.

The judgments of the Court of Appeals of the District of Columbia in cases Nos. 425 and 431 affirmed final decrees of the Supreme Court of the District of Columbia (R. p. 9 in case No. 425 and R. p. 10 in case No. 431), which decrees directed the Treasurer of the United States in case No. 425 to pay to the plaintiff the sum of \$250,000, with interest at the rate of 6% per annum from July 14, 1919, and in No. 431 to pay to the plaintiff the sum of \$500,000, with interest at 6% per

annum, from July 14, 1919. The appeals to this Court have been prosecuted pursuant to paragraphs first, fifth, and sixth of Section 250 of the Judicial Code. (C. 231, 36 Stat. L. 1159.)

These four cases really represent two cases in the Supreme Court of the District of Columbia. The plaintiffs in cases Nos. 425 and 431 purported to institute the suits pursuant to Section 9 of the Trading with the Enemy Act as amended June 5, 1920 (c. 241, 41 Stat. L. 977), and as amended March 4, 1923. (C. 285, 42 Stat. L. 1511.)

After the institution of suits Nos. 425 and 431 the United States of America filed suggestions of certain of its rights, which upon motions of the plaintiffs in each of the cases were stricken out. The appeals from the orders striking out the suggestions in cases Nos. 425 and 431, and the records incident thereto, constitute cases Nos. 424 and 430.

The right of appeal from a judgment of the Court of Appeals of the District of Columbia in a case arising under the Trading with the Enemy Act has never been raised in this Court, but several cases have been brought to this Court under such circumstances by appeals from the judgments of the Court of Appeals of the District of Columbia, and there has been no intimation that there is any doubt about the propriety of such appeals. (See *Behn, Meyer & Company, Ltd., v. Miller*, 266 U. S. 457; *Banco Mexicano v. Miller*, 263 U. S. 591; *Swiss National Insurance Company, Ltd., v.*

Miller, 267 U. S. 42; *Compagnie Internationale de Produits, etc.*, v. *Miller*, 266 U. S. 473.)

The right of the United States to file its suggestion in the cases is sustained by the following decisions: *The Exchange*, 7 Cranch, 116; *United States v. Lee*, 106 U. S. 196; *Stanley v. Schwalby*, 147 U. S. 508.

STATEMENT OF THE CASE

STIPULATION AS TO PRINTING OF RECORDS

The above-entitled cases are four of a group of twenty-three cases now pending in this Court. By stipulation of counsel for the parties in all of these cases the records in the above-entitled causes, together with the record in case No. 423, which is one of the group, alone were printed. The entire group of cases are numbered 423 to 445, both inclusive. It has been stipulated that the disposition of cases Nos. 427, 429, 433, 435, 437, 439, 441, 443, and 445 shall abide the result of case No. 425, and that the disposition of cases Nos. 426, 428, 432, 434, 436, 438, 440, 442, and 444 shall abide the result of the decision of this Court in case No. 424.

Case No. 423, because of certain procedural differences, will require a separate brief.

As heretofore stated, the four cases mentioned in the entitlement hereto really represent only two cases, Nos. 425 and 424 representing one case and Nos. 430 and 431 representing the other. Considering the group as two cases, there is no essential difference between the two, and since it has been

stipulated by the parties that the statement of evidence in No. 424 shall control in all the other cases, this brief will discuss only case No. 425 and its companion case, No. 424. The entire group of twenty-three cases covered by the stipulation represents as of the date of the final decrees in the cases decrees against the Treasurer of the United States in favor of the various plaintiffs in the sum of \$2,380,930.

THE PLEADINGS

The material allegations of the bills of complaint filed in the Supreme Court of the District of Columbia are that the plaintiffs are corporations organized under the laws of a particular state, or are persons who are citizens of the United States, and are not enemies or allies of enemies within the meaning of Section 9 of the Trading with the Enemy Act; that prior to October 6, 1917, the Imperial German Government owed to the various plaintiffs specific amounts of dollars, evidenced by six per cent Treasury notes payable in dollars on April 1, 1917; that the plaintiffs purchased the said notes for value prior to the declaration of war between the United States and Germany and prior to October 6, 1917; that the amounts of the said notes constitute a debt within the meaning of the provisions of Section 9 of the Trading with the Enemy Act; that on or about the 14th day of March, 1917, the payment and maturity of the notes were extended to April 1, 1918,

and interest thereon paid in advance to September 1, 1918.

Paragraph 8 of the bill of complaint in each case being the paragraph which alleges facts around which one of the chief controversies in the case revolves, it is quoted in full, to wit (Rec. p. 2):

That the Alien Property Custodian now has in his possession, or to his credit in the Treasury of the United States, funds of the Imperial German Government which were paid and delivered to him under the provisions of said trading with the enemy act, as amended, and which are available by law, sufficient to pay the entire indebtedness, both principal and past due interest, owing to complainant.

Paragraph 9 of the bill of complaint alleges that the present German Government has recognized the debt of the Imperial German Government and has admitted the indebtedness claimed by the plaintiffs, both principal and past due interest, and has consented in writing to the payment of the principal and interest of said debt out of available funds in the possession of the Alien Property Custodian or to his credit in the Treasury of the United States. Omitting further allegations of the bills, which are not material to the present case, the bills of complaint pray that decrees be entered for the amounts of the notes with interest thereon.

The Alien Property Custodian and the Treasurer of the United States filed motions to dismiss the bills of complaint (Rec. p. 4) upon several grounds, which will appear from the record and which will be dealt with in the argument following. These motions to dismiss were overruled, and thereafter the Custodian and the Treasurer filed their answers (Rec. p. 5) to the various bills of complaint.

The answers of the Custodian and the Treasurer admitted their official capacity; the American citizenship or incorporation of the plaintiffs, as the case may be; the nonenemy character of the plaintiffs and the enemy character of the Imperial German Government.

With respect to all the other material allegations of the bills of complaint, to wit, the issuance of the Treasury notes by the Imperial German Government, the purchase of them by the plaintiffs, the indebtedness of the Imperial German Government to the plaintiffs, the possession by the Alien Property Custodian or the Treasurer of the United States of any funds out of which the indebtedness could be paid, the admission of the Imperial German Government of the indebtedness to the plaintiffs, and the assent of the Imperial German Government to the payment of the amounts alleged to be due out of funds in the possession of the Custodian or the Treasurer, the Custodian and the Treasurer answered that they

had no knowledge or information sufficient to form a belief with respect to such averments and demanded strict proof thereof.

THE EVIDENCE

At the hearing upon the bills of complaint and answers the plaintiffs offered testimony and evidence upon which the Court based its finding that the Treasury notes of the Imperial German Government, for the payment of which the suits were brought, were owing to and owned by the plaintiffs in the cases prior to October 6, 1917. (Rec. p. 16.)

In order to prove the allegations of paragraph 8 of the bills of complaint, which allege that the Alien Property Custodian now has in his possession, or to his credit in the Treasury of the United States, funds of the Imperial German Government, which are available by law, and sufficient to pay the entire indebtedness of the plaintiffs, the plaintiffs over the objection and exception of the defendants on the ground of immateriality and incompetency introduced into evidence an answer filed on behalf of the Custodian and the Treasurer in another case then pending in the Supreme Court of the District of Columbia, namely, Mechanics Securities Corporation, a corporation, against the same defendants. (Rec. bottom p. 16 and pp. 17 and 18.) The plaintiffs insisted that this answer contained an admission by the Alien Property Custodian and the

Treasurer of the United States that they possessed funds which belonged at the time of seizure to the Imperial German Government. The portion of this evidence material to the point is as follows (Rec. pp. 17 and 18):

Answering the averments of paragraph numbered 8 of the bill of complaint, these defendants separately and severally say that the Alien Property Custodian, acting under and pursuant to the terms and provisions of the trading with the enemy act, the amendments thereto, and the proclamations and Executive orders issued thereunder, after investigation, determined that the Imperial German Government was an enemy within the purview and meaning of the said act, the amendments thereto, and the proclamations and Executive orders issued thereunder, and that certain moneys were owing or belonging to, held for, by, on account of, and for the benefit of the said enemy. Thereupon the Alien Property Custodian required the said moneys and other property to be conveyed, transferred, assigned, delivered, and/or paid to him, to be by him held, administered, and accounted for as provided by law. Thereafter the demands of the Alien Property Custodian were fulfilled and he received certain moneys, pursuant to the said demand, and paid the same to the Treasurer of the United States, in accordance with the provisions of the trading with the enemy act. The amount of said moneys received as

aforesaid is, at the present time, approximately five hundred fifteen thousand, five hundred seventy-one dollars (\$515,571) and is held by the Alien Property Custodian in trust No. 555.

Further answering said paragraph, these defendants separately and severally say that the Alien Property Custodian, acting under and pursuant to the terms and provisions of the trading with the enemy act, the amendments thereto, and the proclamations and Executive orders issued thereunder, after investigation, determined that certain money was by Lee Higginson & Company, of Boston, Massachusetts, in the approximate amount of five million dollars (\$5,000,000) held for, by, on account of, and for the benefit of an unknown enemy. Thereupon the Alien Property Custodian required the said money to be paid to him. Thereafter the demand of the Alien Property Custodian was fulfilled, and he received as aforesaid the said sum of five million dollars (\$5,000,000), which he paid to the Treasurer of the United States, in accordance with the terms and provisions of the trading with the enemy act, and the said money was thereupon placed to the credit of unknown enemy No. 1, in trust No. 9322. Thereafter, and to wit, on or about the 8th day of March, 1923, the Alien Property Custodian determined that two million two hundred thousand dollars (\$2,200,000) of the five million dollars (\$5,000,000) received as aforesaid was at the time of the receipt

thereof by the Alien Property Custodian held for, by, on account of, and for the benefit of the Imperial German Government. Thereupon the Alien Property Custodian directed the Treasurer of the United States to transfer from trust No. 9322 the sum of two million two hundred thousand dollars (\$2,200,000) and to place the same to the credit of the Imperial German Government, opening a special account designated "Trust 555—special." Thereafter the Treasurer of the United States, pursuant to the said instructions, so transferred the said two million two hundred thousand dollars (\$2,200,000) to said trust.

Further answering said paragraph, these defendants say that they have no further knowledge, information, or belief with respect to the ownership of any of the said money received as aforesaid by the Alien Property Custodian, and this Court must determine out of what, if any, of the money held by the Alien Property Custodian, and/or the Treasurer of the United States, any claim which these defendants may establish must be paid.

The plaintiffs also introduced into evidence, over the objection and exception of the defendants on the ground of immateriality and irrelevancy, copies certified under the seal of the Treasury Department of record entries of the Treasurer in trust No. 9322 "Undisclosed Enemy No. 1," and trust No. 555 "Imperial German Government"

(Rec. p. 19), and a certified copy of a letter addressed to the Secretary of the Treasury, which is as follows (Rec. p. 19):

ALIEN PROPERTY CUSTODIAN,
ARLINGTON BUILDING,
VERMONT AVENUE AND H STREET,
Washington, March 9, 1923.

The Honorable the SECRETARY OF THE
TREASURY,

*Division of Bookkeeping & Warrants,
Washington, D. C.*

SIR: On March 29, 1918, there was established a credit of \$5,077,057.64 for Special Account No. 8, account of undisclosed enemy No. 1, Trust 9322, representing funds held by the Federal Reserve Bank of Boston.

It is now desired that you transfer on your records from trust 9322 the sum of \$2,200,000 to the account of the Imperial German Government—trust No. 555—special. It is desired that this fund of \$2,200,000 be not intermingled with funds already on deposit in trust 555 and is therefore desired that you mark the new account opened as Trust No. 555—Special.

The funds to be so set aside are to be used for the Imperial German Government in connection with Claim No. 386 and the claims associated therewith.

Very truly yours,

(Signed) DIVISION OF TRUSTS,
WM. M. WHITE,
Assistant Chief.

The defendants offered in evidence, and there was received in evidence over the objection and exception of the plaintiffs on the ground of immateriality and irrelevancy and that it was a self-serving declaration, a certified copy of a letter to the Secretary of the Treasury from the Alien Property Custodian. This letter is as follows (Rec. pp. 20 and 21):

ALIEN PROPERTY CUSTODIAN,
ARLINGTON BUILDING,
VERMONT AVENUE & H STREET,
Washington, March 14, 1924.

The Honorable the SECRETARY OF THE
TREASURY,
*Division of Bookkeeping and Warrants,
Washington.*

SIR: Under date of March 29, 1918, there was deposited to the credit of trust No. 9322, undisclosed enemy No. 1, the sum of \$5,077,057.64. On March 10, 1923, there was transferred from this trust to trust No. 555, special, the sum of \$2,200,000.00 under orders from this office.

This letter is for the purpose of withdrawing the instructions sent you under date of March 10, 1923, and it is our desire that the sum of \$2,200,000.00 be retained in trust No. 9322, undisclosed enemy No. 1.

It is not intended that the administrative action so taken and within the proper functions of this office should be construed as establishing title or ownership to the fund so transferred.

I am advised by the Department of Justice that a decree has been entered in the suit of the Mechanics Security Corporation against Thomas W. Miller, as Alien Property Custodian, and Frank White, treasurer, requiring the payment by you out of the funds so transferred of the sum of \$500,000.00; and that this decree was entered without proof of ownership in the Imperial German Government because of an admission contained in our answer that the said fund had been transferred. The answer was intended and supposedly contained the necessary allegation to require proof of ownership.

There has been filed with this office a claim of the United States of America by Frank T. Hines, Director of the United States Veterans' Bureau, for the sum of \$29,304,553.39, and I am further advised that numerous other suits are pending by private claimants against the Imperial German Government, seeking resort to the fund so established. It is clear to me that the public interest requires that before any of these moneys be disbursed there shall be a judicial determination of ownership, and I am accordingly requesting the foregoing action pending a determination by the courts on this point.

Respectfully yours,

(Signed)

THOMAS W. MILLER,
Alien Property Custodian.

TWM:SH

With the exception of the table on page 22, which was introduced into evidence purely for the convenience of the Court, this is all the evidence which was introduced by any of the parties.

Suggestion as to the rights of the United States of America

In each of the cases aforementioned the United States of America, by the Attorney General of the United States, filed a suggestion. (Rec. pp. 4 ff-No. 424.) This suggestion alleges that the United States of America is a body politic and not an enemy under the terms of the Trading with the Enemy Act; that the Imperial German Government was, and its successor is, an enemy within the meaning of that Act, and that on or about the 4th day of August, 1914, a state of war was declared by Germany on the one side and France, England, and their allies on the other.

It is further alleged that after the outbreak of war in Europe in August, 1914, the United States of America, in accordance with certain acts of Congress, issued, for valuable consideration, certain policies of insurance upon certain vessels and their cargoes, and also certain policies of insurance upon the lives of the crews of said vessels. The names of the vessels, together with the policies covering the same and their cargoes and the persons upon whose lives insurance was issued, together with policies covering the same, are set forth in full in the exhibits to the suggestion.

During the time that said policies of insurance were in full force and effect it is alleged certain of the said vessels and their cargoes were destroyed by armed vessels of the Imperial German Government, and during the time that the policies of insurance were in effect upon the lives of the persons mentioned the said persons were killed by the Imperial German Government at the same time the vessels were destroyed.

It is further alleged that by reason of the destruction of these vessels and the killing of the persons by Germany the United States of America became liable to pay the owners of the vessels and of the cargoes, and to the beneficiaries of the policies of insurance upon the lives of the persons insured, large sums of money by virtue of the terms of the policies of insurance referred to, and that such sums of money have long since been paid. These sums of money are fully catalogued in the exhibits to the suggestion. It is alleged that by reason of the said wrongful acts of Germany a right has accrued, and there is now due and owing to the United States from the successor of the Imperial German Government a sum in excess of \$29,000,000, which has not been paid by the Imperial German Government, or its successor, either in part or in whole, and for all of which Germany has agreed to reimburse the United States of America. Of the said amount in excess of \$29,000,000 a sum in excess of sixteen and one-half million dollars was due and owing to the United

States prior to October 6, 1917, and it is asserted by the United States of America that *in the event* that the plaintiffs in the suits should show that any money in the possession of the Custodian or the Treasurer was, at the time of seizure thereof, the money of the Imperial German Government, the United States of America is entitled to assert its claim set forth in the suggestion against any such money held in the Treasury, either prior to the claim of the plaintiffs or upon a pro rata basis with the claims of the plaintiffs.

It is alleged in the suggestion that the United States has filed with the Alien Property Custodian a notice of its claim under oath, and in the form required by the Alien Property Custodian, pursuant to the terms of the Trading with the Enemy Act.

The suggestion also alleges that there are twelve suits, which are named, pending in the Supreme Court of the District of Columbia, in which the Custodian and the Treasurer are defendants, and five suits of a like nature in the District Court of the United States for the Eastern District of Missouri, the plaintiffs in all of which are alleged creditors of the Imperial German Government, and seek to recover out of moneys held by the Treasurer of the United States large sums of money alleged to be owing to them, the aggregate amount of which is far in excess of the amount of money now held by the Treasurer of the United States.

The suggestion then alleges upon information and belief that the money in the Treasury of the United States, out of which the plaintiffs in the various suits seek to recover, if such money ever belonged to the Imperial German Government, is the only fund of the Imperial German Government available for the payment of the alleged indebtednesses of the plaintiffs in the various suits, and of other creditors not before the Court; and if the plaintiffs in these suits are allowed to secure satisfaction of their claims out of such funds to the exclusion of the United States, the United States will suffer an irreparable injury, and there will be an undue preference as between the creditors of the Imperial German Government, or its successor or successors.

It is alleged that the United States, as well as certain citizens of the United States, are creditors of the Imperial German Government in matters other than those set out in the suggestion, and that by treaty the Imperial German Government and its successors have agreed with the United States to make certain payments and restitutions, and that by later agreement a commission, to be known as "Mixed Claims Commission," was established to determine the liability and to fix the amount of the awards due from the Imperial German Government to the United States and its citizens, and that no provision for payment was made by this agreement; that awards to the United States Government and to the United States citizens have been

made and are now being made; that this is the only fund now available belonging to the Imperial German Government from which awards can be satisfied or indebtednesses paid; that if judgments are secured in the present suits and decrees satisfied the fund held by the Treasurer of the United States will be exhausted and there will be nothing out of which the United States and other creditors can secure payment of their claims, and that such would be an inequitable preference of creditors.

The suggestion then prays that the bill of complaint be dismissed; that the indebtedness of the United States set forth therein be determined by the Court as a valid and existing indebtedness, and that the Treasurer of the United States be ordered and directed to pay to the United States the amount thereof out of the funds aforesaid to the extent thereof; that this Court find and determine that the United States is entitled to a priority over other claimants, or is at least entitled to share pro rata with other claimants in the distribution of the funds, and that this Court take jurisdiction of the claims of the United States against the Imperial German Government, and in the event the funds aforesaid are determined to have been funds of the Imperial German Government prior to the seizure thereof, that this Court order the payment to the United States out of the said funds of the claims of the United States.

The plaintiffs in each of the cases filed a motion to strike out the suggestion of the United States. This motion was granted and the suggestion stricken out. The matter having been before the Court upon a motion to strike out, all the facts alleged in the suggestion must be taken as true.

ASSIGNED ERRORS INTENDED TO BE URGED

The appellants will urge in case No. 425 the First, Second, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, and Twelfth Assignments of Error (R. 33, 34), to wit:

(1) The court erred in ordering, adjudging, and decreeing that the final decree entered in this case in the Supreme Court of the District of Columbia on the 19th day of June, 1924, be affirmed.

(2) The court erred in not ordering, adjudging, and decreeing that the final decree entered in the case in the Supreme Court of the District of Columbia on the 19th day of June, 1924, be reversed.

(5) The court erred in adjudging and deciding that the Supreme Court of the District of Columbia had jurisdiction of the subject matter of the suit.

(6) The court erred in not adjudging and deciding that the Supreme Court of the District of Columbia was without jurisdiction of the subject matter of the suit.

(7) The court erred in deciding and adjudging that it is clear from the terms of the trading with the enemy act that a suit brought under it is not in the nature of a

creditor's bill calling for a marshalling of claimants, nor does it give any preference to one creditor over another or call for a sharing pro rata with other creditors in the funds to which the claims are made.

(8) The court erred in deciding and adjudging that there was competent evidence and sufficient in character to establish a prima facie case as to the existence of funds seized from the Imperial German Government and held in the Treasury of the United States against which the claims of the plaintiffs could be asserted.

(9) The court erred in deciding and adjudging that the transfer of the \$2,200,000 to Trust No. 555, Special, "Imperial German Government," on March 8, 1923, was a determination by the Alien Property Custodian of the enemy ownership of the fund.

(10) The court erred in deciding and adjudging that the transfer of the \$2,200,000 to Trust No. 555, Special, "Imperial German Government," on March 8, 1923, amounting (sic) to a finding, after investigation, that the fund should be held "for, by, on account of, and on behalf of, or for the benefit of the Imperial German Government."

(11) The court erred in deciding and adjudging that there was nothing in the record to indicate that the ownership of the fund in question up to March 8, 1923, had been specifically determined.

(12) The court erred in not adjudging, ordering, and decreeing that the decree of

the Supreme Court of the District of Columbia entered in the case on the 19th of June, 1924, be reversed and the cause remanded to that court with instructions that the bill of complaint be dismissed.

In case No. 424 the appellants have assigned ten errors, all of which will be urged (R. 29-30), to wit:

(1) The Court erred in ordering, adjudging, and decreeing that the appeal of the United States of America from the order entered in the Supreme Court of the District of Columbia on the 30th day of April, 1924, be dismissed.

(2) The Court erred in deciding and adjudging that the United States is not a "person," as mentioned in section 9 of the trading with the enemy act, or such a party as can take advantage of the provisions thereof.

(3) The Court erred in adjudging and deciding that the United States has no such interest in the fund in question as can be affected by the present suit.

(4) The Court erred in deciding and adjudging that the fund in question has been set aside by the trading with the enemy act for the satisfaction of such claims as may be legally brought against it by claimants other than the United States.

(5) The Court erred in deciding and adjudging that the United States has relinquished any interest it may have had in the

fund in favor of creditors of the enemy, in this instance the German Government.

(6) The Court erred in not deciding and adjudging that the United States is a "person" within the meaning of section 9, trading with the enemy act, as amended.

(7) The Court erred in not deciding and adjudging that the United States is entitled to assert its claims against the fund in question.

(8) The Court erred in adjudging and deciding that the order striking the suggestion of the United States from the files was a mere interlocutory order which could not furnish the basis for a separate appeal.

(9) The Court erred in deciding and adjudging that the United States was not a party in any sense or aspect of the case in the court below, and it never at any time sought to have itself made a party by intervention or otherwise.

(10) The Court erred in not ordering, adjudging, and decreeing that the order of the Supreme Court of the District of Columbia striking out the suggestion of the United States be reversed and the cause remanded with instructions that the motion to strike out the suggestion of the United States be overruled.

The Assignments of Error in cases No. 431 and 430 are precisely the same as the Assignments in cases No. 425 and 424, respectively.

ARGUMENT

I

The Supreme Court of the District of Columbia was without jurisdiction to entertain these suits, because they involved an adjudication as to the conduct and obligations of a foreign sovereign

The jurisdiction of the Supreme Court of the District of Columbia to entertain these suits must be found, if it exists, under the terms and provisions of Subsection (a) of Section 9 of the Trading with the Enemy Act as amended June 5, 1920 (c. 241, 41 Stat. L. 977), and as amended March 4, 1923 (c. 285, 42 Stat. L. 1511). This subsection of Section 9 is precisely the same in each amendment to Section 9, and is as follows:

That any person not an enemy or ally of enemy claiming any interest, right, or title in any money or other property which may have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States, or to whom any debt may be owing from an enemy or ally of enemy whose property or any part thereof shall have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States may file with the said custodian a notice of his claim under oath and in such form and containing such particulars as the said custodian shall require; and

the President, if application is made therefor by the claimant, may order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States, or of the interest therein to which the President shall determine said claimant is entitled: *Provided*, That no such order by the President shall bar any person from the prosecution of any suit at law or in equity against the claimant to establish any right, title, or interest which he may have in such money or other property. If the President shall not so order within sixty days after the filing of such application; or if the claimant shall have filed the notice as above required and shall have made no application to the President, said claimant may institute a suit in equity in the Supreme Court of the District of Columbia or in the district court of the United States for the district in which such claimant resides; or if a corporation, where it has its principal place of business (*to which suit the Alien Property Custodian or the Treasurer of the United States, as the case may be, shall be made a party defendant*) to establish the interest, right, title, or debt so claimed; and if so established, the court shall order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the

United States or the interest therein to which the court shall determine said claimant is entitled. If suit shall be so instituted, then such money or property shall be retained in the custody of the Alien Property Custodian, or in the Treasury of the United States, as provided in this Act, and until any final judgment or decree which shall be entered in favor of the claimant shall be fully satisfied by payment or conveyance, transfer, assignment, or delivery by the defendant, or by the Alien Property Custodian, or Treasurer of the United States on order of the court, or until final judgment or decree shall be entered against the claimant or suit otherwise terminated. [*Italics supplied.*]

This statute permits any person not an enemy or ally of enemy to whom any debt may be owing from an enemy or ally of enemy whose property or any part thereof shall have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder, or held by him or by the Treasurer of the United States, to institute a suit to secure the payment of his debt out of any property or money of the debtor which may be in the possession of the Alien Property Custodian or in the Treasury of the United States.

Section 2 of the Trading with the Enemy Act (c. 106, 40 Stat. L. 411) defines enemies for the purpose of this statute. It provides as follows:

That the word "enemy," as used herein, shall be deemed to mean, for the purposes of such trading and of this Act—

(a) Any individual, partnership, or other body of individuals, of any nationality, resident within the territory (including that occupied by the military and naval forces) of any nation with which the United States is at war, or resident outside the United States and doing business within such territory, and any corporation incorporated within such territory of any nation with which the United States is at war, or incorporated within any country other than the United States and doing business within such territory.

(b) The government of any nation with which the United States is at war, or any political or municipal subdivision thereof, or any officer, official, agent, or agency thereof.

(c) Such other individuals, or body or class of individuals, as may be natives, citizens, or subjects of any nation with which the United States is at war, other than citizens of the United States, wherever resident or wherever doing business, as the President, if he shall find the safety of the United States or the successful prosecution of the war shall so require, may, by proclamation, include within the term "enemy."

From this definition it will be apparent that the plaintiffs in the cases are not enemies. It will appear from the record that (R. 16) debts are

owing to the plaintiffs from the Imperial German Government. The question, then, is whether or not the Act was intended to provide for suits in those cases where the obligation was owing by a sovereign government, which, if the Act is to be taken absolutely literally, is an enemy within the definition of enemy found in Section 2.


On general principles it is well settled that a sovereign can not be sued in its own courts or in the courts of any other sovereign without its consent. *Beers v. State of Arkansas*, 61 U. S. (20 How.) 527. Nor can an affirmative judgment be awarded by the Courts of the United States against a foreign sovereign in a case where the sovereign has instituted a suit in its own name in Courts in the United States. *French Republic v. Inland Navigation Co. et al.*, 263 Fed. 410. Nor are the funds of a foreign sovereign on deposit in the United States subject to attachment, *Kingdom of Roumania v. Guaranty Trust Company of New York*, decided by the Circuit Court of Appeals for the Second Circuit, 250 Fed. 341; *Hassard v. United States of Mexico*, 29 Misc. 511, affirmed 46 App. Div. 623 and 173 N. Y. 645. Nor will a process in admiralty issue against a vessel which is the property of a foreign sovereign, even though the sovereign is engaging in commerce, *The Maipo*, 252 Fed. 627; *The Adriatic*, 258 Fed. 902; *Molina v. Comision Reguladora de Necardo de Henequen*, 92 N. J. L. 38.

All of the above cases lay down principles of law which are well recognized by the courts of the United States. The principle, however, which has the most bearing upon the jurisdiction of the Supreme Court of the District of Columbia in these cases is the principle that a court in the United States will not entertain jurisdiction of a case where in order for the Court to decide the case it would require the court to pass upon the acts or obligations of a foreign sovereign, even though the foreign sovereign is not a party to the suit. This principle was most emphatically stated by this Court in the case of *Underhill v. Hernandez*, 168 U. S. 250, where it was stated:

Every sovereign State is bound to respect the independence of every other sovereign State, and the courts of one country will not sit in judgment on the acts of the government of another done within its own territory. Redress of grievances by reason of such acts must be obtained through the means open to be availed of by sovereign powers as between themselves.

In the case of *Oetjen v. Central Leather Co.*, 246 U. S. 297, the plaintiff sought to recover from the defendant by suit in replevin certain property which the defendant had bought from an agent of the Mexican Government, which had been recognized by the United States. The plaintiff maintained that the property had been illegally seized by the officials of whom the defendant had pur-

chased the goods. The plaintiff claimed his title through the owner of the goods at the time of seizure. No attempt was made in the case to make the foreign sovereign a party to the suit, but this Court refused to take jurisdiction of the case, on the ground that to do so would require this Court to examine the conduct and actions of a foreign sovereign recognized by the political branch of the United States Government. After quoting from *Underhill v. Hernandez, supra*, this Court said:

✓✓ The principle that the conduct of one independent government can not be successfully questioned in the courts of another is as applicable to a case involving the title to property brought within the custody of a court, such as we have here, as it was held to be to the cases cited, in which claims for damages were based upon acts done in a foreign country, for it rests at last upon the highest considerations of international comity and expediency. To permit the validity of the acts of one sovereign State to be re-examined and perhaps condemned by the courts of another would very certainly "im-
4.  peril the amicable relations between governments and vex the peace of nations."

It is not necessary to consider, as the New Jersey court did, the validity of the levy of the contribution made by the Mexican commanding general, under rules of international law applicable to the situation, since the subject is not open to reexamination by this or any other American court.

The remedy of the former owner, or of the purchaser from him, of the property in controversy, if either has any remedy, must be found in the courts of Mexico or through the diplomatic agencies of the political department of our Government. The judgments of the Court of Errors and Appeals of New Jersey must be affirmed.

The same principles were enunciated by this Court in *American Banana Company v. United Fruit Company*, 213 U. S. 347, and in *Ricaud v. American Metal Company*, 246 U. S. 304.

Laying aside, therefore, any question of the provisions of the Trading with the Enemy Act it will be quite apparent that a suit can not be maintained in the Courts of the United States where it is necessary for the Court to pass upon an obligation of the Imperial German Government. In the present cases the Court must pass upon an obligation of the Imperial German Government before a final decree can be entered. The suits were brought to recover upon notes issued by that Government. Before the Court could pass upon this question it was necessary for evidence to be introduced to prove the validity of the notes and the ownership of the plaintiffs in those notes, and for the Court to find from that evidence that an obligation was owing by the Imperial German Government to the plaintiffs. In the final decree (R. 9) the Court specifically passed upon the obligation and held in paragraph 2 of the decree "that prior to October 6, 1917, the Imperial

German Government was an enemy within the provisions of said Trading with the Enemy Act, and owed the plaintiff a debt in the sum of \$250,000, evidenced by its Treasury notes * * *." The Court, therefore, clearly assumed to pass upon "the conduct of one independent sovereign."

The insistence of the appellees, however, is that regardless of these general principles of law Section 2 of the Trading with the Enemy Act defines an "enemy," amongst others, as the government of a country with which the United States is at war. They, therefore, say that the Imperial German Government is an enemy within the meaning of the Trading with the Enemy Act, and that when Section 9 provides that any person to whom a debt may be owing by an enemy to a nonenemy may recover the debt, it intended to include debts owing to nonenemies by the Imperial German Government. It would seem to be an elemental principle of law that the Congress of the United States can not pass laws to bind a foreign sovereign. The inability of Congress or any legislature in the United States to pass a law which will have any effect upon persons outside of the jurisdiction of the United States was clearly recognized by this Court in *American Banana Company v. United Fruit Company*, 213 U. S. 347.

It is also quite apparent that Congress could not have contemplated a situation such as the present when Section 9 of the Act was passed. That the Courts will ascertain the intention of the

legislature in this particular is shown by the case of *Hassard v. United States of Mexico*, 29 Misc. 511 aff. 173 N. Y. 645. In that case an attachment was obtained against the Republic of Mexico. There was no appearance on behalf of the defendant. By instructions from the Attorney General of the United States the United States District Attorney appeared in the proceedings and moved to vacate the attachment and called the attention of the Court to its want of jurisdiction in the premises. The United States Attorney disclaimed appearing by any authority from the defendants but only on instructions from the Attorney General and as *amicus curiae*. The plaintiff's attorney combated the right of the District Attorney to intervene on the ground that a certain section of the code expressly provided the only method by which a motion to vacate an attachment could be made and that the District Attorney had no standing under these provisions. With respect to this argument the Court said:

The fault of this argument lies in the fact that section 682 makes no provision for vacating an attachment of this kind, because the legislators never contemplated the issuance of such an attachment. Properly speaking, this is not a proceeding to vacate a thing that ever had validity, but rather to revoke what was the result of an inadvertence in an *ex parte* proceeding and a nullity *ab initio* and to set the court right on its own records and in the eyes of the world.

The suits provided for under Section 9 of the Trading with the Enemy Act are suits of individuals against individual debtors, and Congress did not contemplate when Section 9 was passed that it should apply to suits upon the debts of a Government. It is not to be assumed that Congress intended to violate the principles of international law.

But even assuming that Congress intended to include in Section 9 permission to bring suit upon claims against an enemy government, to that extent Section 9 is unconstitutional. Claims against a foreign sovereign by a citizen of the United States are subject only to diplomatic negotiations even though the United States may be at war with the foreign state.

As was stated by this Court in *Underhill v. Hernandez, supra*, "redress of grievances by reason of such acts (that is, the acts of a foreign sovereign) must be obtained through the means open to be availed of by sovereign powers as between themselves."

It is, therefore, quite apparent that claims by American citizens against foreign sovereigns are subject to consideration only by the political departments of the governments concerned. Political questions under the form of government of the United States are entrusted to the executive branch. It is well recognized that Congress can not invest the Courts with authority to pass judicially upon political questions. See *Hayburn's*

case, 2 Dall. 410 and note on page 409; *United States v. Ferreira*, 54 U. S. (13 How.) 39; *United States v. Todd*, 54 U. S. (13 How.) 51, note; *Gordon v. United States*, 117 U. S. 697; *Ex Parte Riebeling*, 70 Fed. 310; *Ex Parte Gans*, 17 Fed. 471; *United States v. Queen et al.*, 105 Fed. 269; *United States v. Hay*, 20 App. D. C. 576.

The act of the sovereign in these cases was essentially an act by the sovereign in its sovereign character. The matters involved are, therefore, essentially political. Even those who maintain that there are circumstances under which the property of a foreign sovereign should be subjected to the judicial processes of the country where the property is located, concede that it is improper for a sovereign to examine into a question such as the present one. For instance, the Institute of International Law, when it met at Hamburg in 1891 and attempted to codify the rules applicable to certain of these questions, while adopting in its resolutions certain principles permitting actions against a foreign sovereign, specifically excluded actions based on acts of sovereignty, including actions concerning foreign debts contracted by public subscription. See Alfred Hays "Private Claims against Foreign Sovereigns," 38 Harvard Law Review, 599, 603, 604.

In fact, the English courts have gone so far as to hold that the bonds of a foreign sovereign are not contractual obligations but mere engagements of honor by the foreign sovereign. See *Twycross*

v. *Dreyfus*, 36 L. T. R. (N. S.) 752. If this is so it merely emphasizes the fact of the political nature of the questions here involved, which can not be subjected to judicial determination either upon general principles or pursuant to an act of Congress.

So strong is this principle that the highest Court of New York has held that even a foreign government diplomatically unrecognized by the United States, can not be sued in the Courts of the United States. *Wulfsohn v. Russian Socialist Federated Soviet Republic*, 234 N. Y. 372. In this case the Court of Appeals summed up the entire proposition in these words:

“To cite a foreign potentate into a municipal court for any complaint against him in his public capacity is contrary to the law of nations and an insult which he is entitled to resent.” (*De Haber v. Queen of Portugal*, 17 Q. B. 171.) In either case to do so would “vex the peace of nations.” In either case the hands of the state department would be tied. Unwillingly it would find itself involved in disputes it might think unwise. Such is not the proper method of redress if a citizen of the United States is wronged. The question is a political one, not confided to the courts but to another department of government. Whenever an act done by a sovereign in his sovereign character is questioned, it becomes a matter of negotiation or of reprisals or of war.

See also *The Maipo*, 259 Fed. 367; *Hewitt v. Speyer*, 250 Fed. 367.

It is, therefore, apparent that the question of the liability of the Imperial German Government upon its Treasury notes is purely a political one subject only to consideration in diplomatic negotiations conducted by the political branches of the two governments. Congress can, therefore, not provide for suits involving the obligations of the Imperial German Government.

II

There is no evidence to prove that there is in the Treasury of the United States any money which, at the time of seizure, belonged to the Imperial German Government, or that the Alien Property Custodian has in his possession property out of which the claims of the appellees herein may be paid

Under Section 9 of the Trading with the Enemy Act, as amended, in order for the plaintiffs to recover, it must appear that the Alien Property Custodian has property in his possession which at the time of seizure belonged to the Imperial German Government, or that there is in the Treasury of the United States money which at the time of seizure belonged to the Imperial German Government.

Paragraph eight of the bills of complaint makes the following allegations:

That the Alien Property Custodian now has in his possession or to his credit in the Treasury of the United States funds of the

Imperial German Government, which were paid and delivered to him under the provisions of said trading with the enemy act, as amended, and which are available by law, sufficient to pay the entire indebtedness, both principal and past due interest owing to complainant. (Rec. p. 2.)

The defendants' answer to this paragraph alleges that "they have no knowledge or information sufficient to form a belief with respect to the averments of paragraph 8 of the bill of complaint and therefore demand strict proof thereof." (Rec. p. 5.)

There is no contention on behalf of the appellees that the Alien Property Custodian has in his possession any tangible property out of which their claims may be paid. They rely upon the fact that there is money in the Treasury of the United States, which at the time of seizure, they allege, was the money of the Imperial German Government. In order to prove that there is now in the Treasury of the United States such money, the defendants introduced into evidence, over the objection and exception of the plaintiffs, portions of an answer filed by the defendants in case No. 423, then pending in the Supreme Court of the District of Columbia and considered in a separate brief in this Court. The portions of this answer which are relevant here are in answer to allegations in the bill of complaint in the said suit similar to the allegations in paragraph 8 of the bill of

complaint in the present suits. These portions of that answer are as follows:

Answering the averments of paragraph number 8 of the bill of complaint, these defendants separately and severally say that the Alien Property Custodian, acting under and pursuant to the terms and provisions of the trading with the enemy act, the amendments thereto, and the proclamations and Executive orders issued thereunder, after investigation, determined that the Imperial German Government was an enemy within the purview and meaning of the said act, the amendments thereto, and the proclamations and Executive orders issued thereunder, and that certain moneys were owing or belonging to, held for, by, on account of, and for the benefit of the said enemy. Thereupon the Alien Property Custodian required the said moneys and other property to be conveyed, transferred, assigned, delivered, and/or paid to him, to be by him held, administered, and accounted for as provided by law. Thereafter the demands of the Alien Property Custodian were fulfilled and he received certain moneys, pursuant to the said demand, and paid the same to the Treasurer of the United States, in accordance with the provisions of the trading with the enemy act. The amount of said moneys received as aforesaid is, at the present time, approximately five hundred fifteen thousand five hundred seventy-

one dollars (\$515,571), and is held by the Alien Property Custodian in trust No. 555.

Further answering said paragraph, these defendants separately and severally say that the Alien Property Custodian, acting under and pursuant to the terms and provisions of the trading with the enemy act, the amendments thereto, and the proclamations and Executive orders issued thereunder, after investigation, determined that certain money was by Lee, Higginson & Company, of Boston, Massachusetts, in the approximate amount of five million dollars (\$5,000,000) held for, by, on account of and for the benefit of an unknown enemy. Thereupon the Alien Property Custodian required the said money to be paid to him. Thereafter the demand of the Alien Property Custodian was fulfilled, and he received as aforesaid the said sum of five million dollars (\$5,000,000), which he paid to the Treasurer of the United States, in accordance with the terms and provisions of the trading with the enemy act, and the said money was thereupon placed to the credit of unknown enemy No. 1, in Trust No. 9322. Thereafter, and, to wit, on or about the 8th day of March, 1923, the Alien Property Custodian determined that two million two hundred thousand dollars (\$2,200,000) of the five million dollars (\$5,000,000) received as aforesaid was, at the time of the receipt thereof by the Alien Property Custodian, held for, by, on account of, and for the benefit of the Im-

perial German Government. Thereupon the Alien Property Custodian directed the Treasurer of the United States to transfer from trust No. 9322 the sum of two million two hundred thousand dollars (\$2,200,000) and to place the same to the credit of the Imperial German Government, opening a special account designated "Trust 555, special." Thereafter the Treasurer of the United States, pursuant to the said instructions, so transferred the said two million two hundred thousand dollars (\$2,200,000) to said trust.

Further answering said paragraph, these defendants say that they have no further knowledge, information, or belief with respect to the ownership of any of the said money received as aforesaid by the Alien Property Custodian, and this Court must determine out of what, if any, of the money held by the Alien Property Custodian, and/or the Treasurer of the United States, any claim which these defendants may establish must be paid. (Rec. pp. 17 and 18.)

The only other evidence introduced by the plaintiffs to prove their contentions was certified copies of certain documents from the Treasury Department. One of these documents is an excerpt from the books of the Treasury Department as to the money in question. The other is a letter to the Secretary of the Treasury, which is as follows:

ALIEN PROPERTY CUSTODIAN,
ARLINGTON BUILDING,
VERMONT AVENUE AND H STREET,
Washington, March 9, 1923.

The Honorable The SECRETARY OF THE
TREASURY,

*Division of Bookkeeping & Warrants,
Washington, D. C.*

SIR: On March 29, 1918, there was established a credit of \$5,077,057.64 for Special Account No. 8, account of undisclosed enemy No. 1, Trust 9322, representing funds held by the Federal Reserve Bank of Boston.

It is now desired that you transfer on your records from trust 9322 the sum of \$2,200,000.00 to the amount (sic) of the Imperial German Government—trust No. 555—Special. It is desired that this fund of \$2,200,000.00 be not intermingled with funds already on deposit in trust 555, and is therefore desired that you mark the new account opened as Trust No. 555—Special.

The funds to be so set aside are to be used for the Imperial German Government in connection with Claim No. 386 and the claims associated therewith.

Very truly yours,

(Sgd.) DIVISION OF TRUSTS.

WM. M. WHITE,

Assistant Chief.

(Rec. p. 19.)

The defendants offered into evidence, and it was received over the exception and objection of the plaintiffs, a certified copy of a letter to the Secretary of the Treasury, signed by Thomas W.

Miller, Alien Property Custodian. This letter is as follows:

ALIEN PROPERTY CUSTODIAN,
ARLINGTON BUILDING,
VERMONT AVENUE AND H STREET,
Washington, March 14, 1924.

The Honorable the SECRETARY OF THE
TREASURY,
*Division of Bookkeeping and Warrants,
Washington.*

SIR: Under date of March 29, 1918, there was deposited to the credit of trust No. 9322, undisclosed enemy No. 1, the sum of \$5,077,057.64. On March 10, 1923, there was transferred from this trust to trust No. 555, special, the sum of \$2,200,000.00 under orders from this office.

This letter is for the purpose of withdrawing the instructions sent you under date of March 10, 1923, and it is our desire that the sum of \$2,200,000.00 be retained in trust No. 9322, undisclosed enemy No. 1.

It was not intended that the administrative action so taken and within the proper functions of this office should be construed as establishing title or ownership to the fund so transferred.

I am advised by the Department of Justice that a decree has been entered in the suit of the Mechanics Security Corporation against Thomas W. Miller, as Alien Property Custodian, and Frank White, treasurer, requiring the payment by you out of the funds so transferred of the sum of \$500,000.00; and that this decree was

entered without proof of ownership in the Imperial German Government, because of an admission contained in our answer that the said fund had been transferred. The answer was intended and supposedly contained the necessary allegation to require proof of ownership.

There has been filed with this office a claim of the United States of America by Frank T. Hines, Director of the United States Veterans' Bureau, for the sum of \$29,304,553.39, and I am further advised that numerous other suits are pending by private claimants against the Imperial German Government, seeking resort to the fund so established. It is clear to me that the public interest requires that before any of these moneys be disbursed there shall be a judicial determination of ownership, and I am accordingly requesting the foregoing action pending a determination by the courts on this point.

Respectfully yours,

(Sgd.)

THOMAS W. MILLER,

Alien Property Custodian.

(Rec. pp. 20 and 21.)

This is all the evidence which was before the court to establish the ownership by the Imperial German Government of the money sought to be subjected to the payment of the claims of the plaintiffs.

The appellees insist that the allegations of paragraph 8 of the answer in the other suit, which was introduced into evidence, constitute some evidence

that the funds now in the Treasury of the United States out of which the appellees seek to recover the amount of their indebtednesses belonged at the time of seizure to the Imperial German Government.

The portion of the answer in the other case introduced into evidence simply pleads the facts relative to the letter sent by the Alien Property Custodian to the Secretary of the Treasury on March 9, 1923. (R. 19.)

If the contents of the letter of the Alien Property Custodian affect in any way the ownership of the money in the Treasury of the United States at the time it was seized, or is any evidence whatsoever as to that ownership, then it is, of course, true that any burden upon the plaintiffs in the lower court to prove the ownership of the funds at the time of seizure has been borne.

These appellants insist that the letter of the Alien Property Custodian and his attempt to direct the Treasurer of the United States as to the handling of the funds in question is of no legal effect whatsoever and utterly fails as evidence to show the ownership at the time of seizure. It will be noted that at the time the funds were seized they were seized as the funds of an "unknown enemy," and as such were deposited and held in the Treasury of the United States until the writing of the letter of March 9, 1923.

One of the most fundamental distinctions which must be grasped in order to appreciate the effect of the argument of the appellants is that there is a real distinction between the holding of money seized under the Trading with the Enemy Act and the holding of property, although the action of the Custodian in this case with respect to money would have been just as ineffective had he been attempting to adjudicate as to tangible property. The Alien Property Custodian is the official by delegation from the President, who *seizes* both money and property. He is not, however, the official who is charged with the custody of *money*. Section 12 of the Act provides (c. 106, 40 Stat. L. 423):

That all moneys (including checks and drafts payable on demand) paid to or received by the Alien Property Custodian pursuant to this Act shall be deposited forthwith in the Treasury of the United States, and may be invested and reinvested by the Secretary of the Treasury in United States bonds or United States certificates of indebtedness, under such rules and regulations as the President shall prescribe for such deposit, investment, and sale of securities; and as soon after the end of the war as the President shall deem practicable such securities shall be sold and the proceeds deposited in the Treasury.

Whenever the Alien Property Custodian seized money he was under a mandatory duty to deposit it in the Treasury of the United States. This

deposit of money in the Treasury of the United States relieved the Alien Property Custodian of all duty and authority with respect to such money.

The provisions of Section 12, other than the provision that all moneys shall be deposited by the Alien Property Custodian in the Treasury of the United States, indicate the completeness with which money is removed from the control or authority of the Alien Property Custodian. Section 12 provides that after the money is deposited in the Treasury it may be invested and reinvested by the Secretary of the Treasury in United States securities under such rules and regulations as the President shall prescribe.

Not only is the money removed from the control of the Alien Property Custodian but he has nothing to say with respect to the manner of investment of the funds. This investment is to be made by the Secretary of the Treasury, who in turn is to be controlled by rules and regulations made by the President.

Furthermore, the time of the sale of these securities after the end of the war is to be decided by the President, for the Act provides that as soon after the end of the war as the President shall deem practicable such securities shall be sold and the proceeds deposited in the Treasury of the United States. It is difficult to understand how Congress could have more completely removed the control and handling of money from the jurisdiction of the Custodian.

This distinction between the holding of money and the holding of property is succinctly stated in the case of *Max Henkels v. Miller, as Alien Property Custodian*, decided by the Circuit Court of Appeals for the Second Circuit, 4 Fed. (2d) 988. In that case the Court said:

Again, in whatever trusteeship the Custodian functions the statute (Sec. 12, 40 Stat. 423) confines his office to "property other than money." As to money, he is compelled to pay that forthwith into the Treasury of the United States, and the Congress, in so many words, has refused to him in respect of money the position of trustee.

Tested by ordinary legal formulae, the exact standing of the Custodian is difficult of definition when the various descriptions of his duties, privileges, and responsibilities prescribed by statute are considered together. But this much is, we think, clear, that it can never be said that by reason of conduct such as occurred in this case of *Henkels* the Custodian became a trustee for Henkels in the same sense that he would have become a trustee under a deed *inter partes*, or by reason of an actionable wrong.

There is a technical reason why under this decree Henkels can never succeed in holding the Custodian to the position of a trustee; it is that the decree for money and for an accounting for money runs against the Treasurer of the United States only.

But this objection goes deeper than a mere technicality; it is a recognition in and

by the decree of the fact that when the Custodian sold Henkels's stock and paid the proceeds into the Treasury, he lost control of the money; it became like any other money in the Treasury of the United States, and there subject to congressional action in respect thereof.

The only reason why the decree could in any way operate against the Treasurer of the United States or the Secretary of the Treasury is Section 9 of the statute, the authority of the court below to affect the Treasurer with the decree depended upon that statute alone.

Once money has been deposited in the Treasury of the United States, as required by law, nothing the Alien Property Custodian can do or say can have any effect whatsoever upon the title or character of that money. A determination by the Alien Property Custodian as to any money deposited in the Treasury of the United States pursuant to the Act is of no greater effect than a determination by a private citizen and has no evidentiary value with respect to the ownership of the money at the time of seizure.

It appears from the letter of March 9, 1923, that the money was seized by the Alien Property Custodian and deposited in the Treasury of the United States on or about March 29, 1918, and was placed in an account in the Treasury known as "Special Account No. 8—Account of Undisclosed Enemy No. 1, Trust No. 9322." Any determina-

tion that the Alien Property Custodian made at that time was for the purpose of securing possession of the money. Once having secured possession of the money his right to make determinations with respect to the money ceased, and all he could do was to deposit the money in the Treasury of the United States. Thereafter any determination as to title to the money could be made only by the President acting under Section 9 of the Act, or by a Court acting under the same Act, or by Congress, which reserved to itself under Section 12 of the Act the right to settle claims of enemies to the money.

An examination of the Act will demonstrate the only power to make determinations which is vested in the Alien Property Custodian.

Section 7 (c) (c. 106, 40 Stat. L. 418) of the Trading with the Enemy Act as originally enacted is as follows:

If the President shall so require, any money or other property owing or belonging to or held for, by, on account of, or on behalf of, or for the benefit of, an enemy or ally of enemy not holding a license granted by the President hereunder, which the President after *investigation shall determine is so owing or so belongs or is so held*, shall be conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian. [Italics supplied.]

Section 7 (c) as amended by Act of November 4, 1918 (c. 201, 40 Stat. L. 1020), in so far as material, is as follows:

If the President shall so require, any money or other property, including (but not thereby limiting the generality of the above) patents, copyrights, applications therefor, and rights to apply for the same, trade-marks, choses in action, and rights and claims of every character and description owing or belonging to or held for, by, on account of, or on behalf of, or for the benefit of, an enemy or ally of enemy not holding a license granted by the President hereunder, *which the President after investigation shall determine is so owing or so belongs or is so held*, shall be conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian, or the same may be seized by the Alien Property Custodian; *and all property thus acquired shall be held, administered, and disposed of as elsewhere provided in this Act.* [Italics supplied.]

By Executive Orders of October 12, 1917, and December 3, 1918, the President delegated the authority granted to him by these sections to the Alien Property Custodian.

From these sections it is apparent that the Custodian's jurisdiction with respect to money is limited to the right to collect it or seize it. He must thereafter deposit it in the Treasury of the United States. Once deposited in the Treasury

it is beyond the control of the Custodian. That this is so is emphasized by the fact that Section 9, which provides for suits, after making such provision, states:

* * * to which suit the Alien Property Custodian or the Treasurer of the United States, as the case may be, shall be made a party defendant.

Had the Act intended the Custodian to have control of money even though it was deposited in the Treasury of the United States, there would have been no necessity for providing that the Treasurer should be made a party to the suit. Only the Custodian would have been a necessary party, since a decree against him to pay money, if he had control of the money, would be sufficient.

The first part of Section 9 (c. 241, 41 Stat. L. 977) provides:

That any person not an enemy or ally of enemy claiming any interest, right, or title in any money or other property which may have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States, or to whom any debt may be owing from an enemy or ally of enemy whose property or any part thereof shall have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States * * * may institute suit * * *.

It will be noted that the relief of Section 9 is:

(1) To persons whose property has been seized by the Custodian under a mistaken determination, and

(2) To persons to whom debts are owing by enemies whose property the Custodian or Treasurer holds.

The present suit falls under the second class, and it must be noted that Section 9 makes provision for the payment of debts owed by enemies whose money or property is held by the Custodian or the Treasurer. The debt owing to nonenemies may be ordered paid out of property held by the Custodian actually the property of the enemy debtor. It is not the property simply determined by the Custodian to belong to the enemy debtor. The difference in the wording of Section 9 in this respect and the wording of Section 7 (c) is significant.

There have been numerous cases in the various Federal Courts in which claimants have brought suit to secure from the Alien Property Custodian possession of property which has been determined by the Custodian to be the property of an enemy. Under these circumstances it became necessary for the Court to pass upon the correctness of the Custodian's determination. These were cases, it is true, where nonenemies were claiming a wrongful seizure, but it must follow that the same must apply when nonenemy claimants are creditors.

If the Custodian's determination made under the same provision of the statute is only for the purpose of securing possession in one case, it must be equally true that it is only for the purpose of securing possession in all cases. It might well be that some person other than the enemy in whose name the property was seized would be the owner of the property out of which the debt is sought to be recovered. If this is true, it certainly can not be that the courts would permit the recovery of a debt out of the property of a person who did not owe it, simply because the Custodian had determined that the real debtor did own the property.

The courts have uniformly held that the determination by the Custodian of ownership is merely made for the purpose of securing possession of the property to the Custodian. In *Central Union Trust Co. v. Garvan*, 254 U. S. 554, this Court considered fully the effect of a determination by the Custodian of the ownership of property. In that case this Court said:

As is obvious from the statement of the pleadings, the libels are brought upon the theory that these are purely possessory actions and that for the purposes of immediate possession the determination of the enemy property custodian is conclusive, whether right or wrong. The claimants, on the other hand, set up substantive rights and seek to have it decided in these suits whether the funds are enemy property in

fact and whether they have not the right to detain them. Strictly possessory actions still survive in the laws of some States and have been upheld, leaving the party claiming title to a subsequent suit. *Grant Timber & Manufacturing Co. v. Gray*, 236 U. S. 133. There can be no doubt that Congress has power to provide for an immediate seizure in war times of property supposed to belong to the enemy, as it could provide for an attachment or distraint, if adequate provision is made for a return in case of mistake. As it can authorize a seizure *in pais*, it can authorize one through the help of a Court. The only questions are whether it has done so as supposed by the libellant, and, if so, whether the conditions imposed by the Act have been performed.

If the Custodian was entitled to demand the delivery of the property in question, it does not seem to need argument to show that the demand could be enforced by the District courts under § 17 of the Act giving to those Courts jurisdiction to make all such orders and decrees as may be necessary and proper to enforce the provisions of the Act. The first question, then, is whether the Custodian had the right to make the demand. By Section 5 the President may exercise any power or authority conferred by the Act through such officers as he may direct. It is admitted that he has exercised the powers material to these cases through the Enemy Property Custodian and by the Act of November 4, 1918,

c. 201, 40 Stat. 1020, the Custodian is given the right to seize. By Section 7 (c) as originally enacted, "If the President shall so require, any money or other property owing or belonging to or held for, by, on account of, or on behalf of, or for the benefit of an enemy or ally of an enemy not holding a license granted by the President hereunder, which the President, after investigation, shall determine is so owing or so belongs, or is so held, shall be conveyed, transferred, assigned, delivered, or paid over to the alien property custodian." We are to take it, therefore, that the President has "so required," and that a case is made out under Section 17 unless we are to consider the defenses interposed.

If we look no further than Sec. 7 (c), it is plain that obedience to the Statute requires an immediate transfer in any case within its terms without awaiting a resort to the Courts. The occasion of the duty is a demand after a determination by the President, and it is hard to give much meaning to the words "which the President after investigation shall determine is so * * * held" unless the determination and demand call the duty into being. The condition "after investigation" additionally points to the intent to make his act decisive upon the point, as it is in other cases mentioned in Sec. 7 (a). But it is said that the subject of the section is enemy property only and therefore that the determination can not be final in its

effect. *Day v. Micou*, 18 Wall. 156. And it is true that it is not final against the claimant's rights. Upon surrender the claimant may at once file a claim under Section 9, if he satisfies the representative of the President, and may obtain a return, and, if he does not obtain it in sixty days after filing his application, or forthwith if he has given the required notice but filed no application to the President, may bring a suit to establish his rights in the District Court, in which case the property is to be retained by the Custodian until final decree. These provisions explain the initial words of Sec. 7 (c) as saving the ultimate rights of the claimant while the determination of the President still may be given effect to carry out an immediate seizure for the security of the Government until the final decision upon the right. The reservation implies that mistakes may be made and assumes that the transfer will take place whether right or wrong.

The argument on the original words of the Act, in view of the manifest purpose, seems to us to be strong, but it appears to us to be much strengthened by the amendments of later date. By the Act of November 4, 1918, c. 201, 40 Stat. 1020, Section 7 (c) was amended, among other things, by adding after the requirements of transfer "or the same may be seized by the Alien Property Custodian; and all property thus acquired shall be held, administered, and disposed of as elsewhere provided in this

Act." This shows clearly enough the peremptory character of this first step. It can not be supposed that a resort to the Courts is to be less immediately effective than a taking with the strong hand. *Clinkenbeard v. United States*, 21 Wall. 65, has no application. That was debt on a bond for a tax and turned on the right of the Government to the tax, not on possession. By a later paragraph "the sole relief and remedy of any person having any claim to any * * * property" transferred to the Custodian "or required so to be or seized by him shall be that provided by the terms of this act." The natural interpretation of this clause is that it refers to the remedies expressly provided, in this case by Sec. 9; that property required to be transferred and property seized stand on the same footing, not that the resort by the Custodian to the Courts instead of to force opens to the person who has declined to obey the order of the statute or who has prevented a seizure a right by implication to delay what the statute evidently means to accomplish at once.

* * * The present proceeding gives nothing but the preliminary custody such as would have been gained by seizure. It attaches the property to make sure that it is forthcoming if finally condemned and does no more.

See also *Stoehr v. Wallace*, 255 U. S. 239, and *Commercial Trust Co. v. Miller*, 262 U. S. 51.

To the same effect have been numerous decisions of the District and Circuit Courts of Appeals. See *Garvan v. Shares of International Agricultural Corporation*, 276 Fed. 206, aff. 283 Fed. 746; *Garvan v. Bonds*, 265 Fed. 477, 481; *Columbia Brewing Company v. Miller*, 281 Fed. 289; *Commercial Trust Company v. Miller*, 281 Fed. 804; *Kahn v. Garvan*, 263 Fed. 909; *Salamandra Insurance Company v. N. Y. Life Insurance Company, Trust Company, et al.*, 254 Fed. 852; and *Simon v. Miller*, 298 Fed. 520.

From all the foregoing it must be apparent that the only determination which can be made by the Alien Property Custodian is a determination made for the purpose of securing possession of property.

When the Alien Property Custodian has made a determination for the purpose of securing possession of money, and has secured possession of the money under that determination (in this case the determination that the money belonged to an undisclosed enemy), he can not after the money has been deposited in the Treasury of the United States, out of his control, change his determination and say that it belongs to a specific enemy or another enemy.

It must be noted in this case that the \$2,200,000 was determined by the Custodian first to belong to an "unknown enemy" and was seized by him as the money of an unknown enemy. This money, pursuant to Section 12, was deposited in the

Treasury of the United States, and therefore was completely out of the possession and jurisdiction of the Alien Property Custodian. He had no further control over the money under the terms of the Act, and the Treasurer was not obliged to change his accounts in this respect.

The lack of authority of the Alien Property Custodian to adjudicate or determine the title to money or property once the property is in his possession or the money in the Treasury of the United States is emphasized by the fact that Sections 9 and 12 make provision for testing the validity of the seizure of money and property. In those cases where money and property have been mistakenly seized as the money and property of an enemy when, as a matter of fact, they are the money and property of a citizen of the United States or of a neutral, Section 9 makes provision for testing the correctness of the original determination of the Custodian.

Where there is a question as to whether one enemy or another owns the property at the time of seizure Congress has provided that such questions shall be determined after the end of the war as it shall direct. In this respect Section 12 provides:

After the end of the war any claim of any enemy, or of an ally of enemy, to any money or other property received and held by the Alien Property Custodian or deposited in the United States Treasury shall be settled as Congress shall direct.

Thus it will be apparent that Congress gave the Alien Property Custodian the right to determine ownership only for the purpose of seizure. Once in his possession, title to property could be adjudicated only by the President, the Courts, or in a manner to be provided for by Congress. In the case of claims of citizens or neutrals to property, Section 9 provided relief. There being no material reason why there should be any adjudication as to title between enemies except in those cases where suits for debts had been instituted under Section 9, Congress provided by Section 12 that the claims of enemies should be dealt with as it should direct after the end of the war.

In the present case there is no evidence before the Court to show that the Custodian or Treasurer had any property or money actually belonging to the Imperial German Government at the time of seizure.

To summarize the foregoing, there is no evidence whatsoever in the record to show the actual ownership by the Imperial German Government at the time of seizure of the money now in the Treasury of the United States and out of which the claimants seek to have their claims paid. To prove the ownership of this money the claimants relied entirely upon the allegations in an answer in another suit against the same defendants, to the effect that the Alien Property Custodian, after he had seized the money as that of an

“Unknown Enemy” and deposited it in the Treasury of the United States in accordance with the provisions of section 12, attempted to determine the money to be the money of the Imperial German Government.

From the foregoing discussion it is apparent—

(1) That a determination of the Alien Property Custodian is effective only for the purpose of permitting a seizure of property or money;

(2) That the Alien Property Custodian, for the purpose of seizing this money, determined it to belong to an unknown enemy, with the exception of a very small amount insufficient to pay the present claims;

(3) That neither the President nor the Attorney General, in whom alone rests the power of the determination of ownership, has decided that the money in question belonged to the Imperial German Government.

(4) The subsequent determinations of the Alien Property Custodian after the money had been deposited in the Treasury of the United States pursuant to the Act, that the money belonged to the Imperial German Government, is a nullity and has no value as evidence of the ownership of the money at the time it was seized.

This being true, the case stands with an allegation in the bill of complaint that there is money out of which the claims may be paid in the Treasury of the United States, with a denial upon information and belief that there is such money,

and no evidence in the record to support the allegations of the bill. For this reason there was no basis upon which a final decree could be entered.

III

The Court erred in granting the motion to strike out the suggestion filed on behalf of the United States of America

The United States may assert its rights in the case by means of a suggestion to the Court by the Attorney General

It has long been established that the Attorney General of the United States has the authority and there is imposed upon him the duty to institute any proceedings in the courts to protect or defend the rights of the United States. *In re Debs*, 158 U. S. 564; *United States v. Beebe*, 127 U. S. 338, *Heckman v. United States*, 224 U. S. 413.

In these cases the method adopted to assert the rights of the United States is by suggestion. The United States of America, by the Attorney General, suggested to the Court that there is owing to the United States by Germany a sum of money in excess of sixteen million dollars, which Germany has agreed to pay; that this indebtedness arose prior to October 6, 1917, and that the United States has filed with the Alien Property Custodian a notice of its claim as provided by Section 9 of the Trading with the Enemy Act.

In any proceedings pending in any Court the United States may come in by way of suggestion

and advise the Court as to its rights. Such a method of asserting the rights of the United States has long been recognized. The first case which these appellants have been able to find is the case of *The Exchange*, 7 Cranch, 116. In that case a libel had been filed against a French warship, which was lying in an American port. The libelants asserted that the vessel had previously belonged to them and had wrongfully been seized by Napoleon, who had converted it into a vessel of war. There was no appearance on behalf of the vessel. There was no appearance in opposition of the libel except the appearance of the United States Attorney, who filed a *suggestion*, protesting against the condemnation of the vessel on the ground that it was a war vessel of a foreign nation with which the United States was at peace.

The District Court, however, ordered the vessel restored to the libelants. From this decision the District Attorney, who had merely filed the suggestion, prosecuted an appeal to the Circuit Court, which reversed the decision of the District Court and ordered the vessel released. From the decision of the Circuit Court the libelants prosecuted an appeal to this Court, where the decision of the Circuit Court was reversed and the decision of the District Court dismissing the libel was affirmed. The decision was rendered by Chief Justice Marshall. The interesting part of the case is the fact that the United States Attorney was permitted to come in by mere suggestion and,

when his contention was overruled, to prosecute an appeal from the decision of the Court. After arriving at his conclusion Chief Justice Marshall said:

If this opinion be correct, there seems to be a necessity for admitting that the fact might be disclosed to the Court by the suggestion of the attorney for the United States.

Apparently the next case in which such a course was taken was the case of *United States v. Lee*, 106 U. S. 196. On page 198 in the Lee case the suggestion of the Attorney General to the Court is set out in full. In the Lee case suit had been brought in ejectment against certain officers of the United States, in their individual capacities, to eject them from certain real estate claimed by the plaintiff. The United States came in and asserted its rights by suggestion. This Court in the case, however, had no occasion to pass upon the propriety of the suggestion.

The matter was discussed, however, in the case of *Stanley v. Schwalby*, 147 U. S. 508. In that case an action of trespass to try title was brought against certain officers of the United States Army in their individual capacities to ascertain whether or not they were entitled to hold certain property by reason of the United States being the owner. The United States itself came in by suggestion and asserted certain rights of the United States.

With respect to the right of the United States to file such a suggestion, this Court said:

We should remark, however, that from the very early period it has been held that even where the United States is not made technically a party under the authority of an Act of Congress, yet where the property of the Government is concerned it is proper for an attorney of the United States to intervene by way of suggestion, and in such case if the suit be not stayed altogether the Court will adjust its judgment according to the rights disclosed on the part of the Government thus intervening.

The United States is a "person" within the meaning of Section 9 of the Trading with the Enemy Act, and is therefore a proper claimant under that section

In discussing the rights of the United States to recover under its suggestion in these cases, the Government assumes that the money out of which recovery is sought belongs to the Imperial German Government only in the event the Court so finds.

Section 9 of the Trading with the Enemy Act provides that "any person not an enemy or ally of enemy," after filing notice of claim as provided in the Act, may secure the payment of an indebtedness owing from an enemy out of property of the enemy which has been seized, or may bring suit to compel the payment of such indebtedness, provided the Alien Property Custodian holds property of the debtor, or there is money in the Treas-

ury of the United States which at the time of seizure belonged to the debtor.

Section 2 of the Act defines the word "person" as follows (c. 106, 40 Stat. L. 412):

The word "person" as used herein shall be deemed to mean an individual, partnership, association, company, or other unincorporated body of individuals or corporation, or *body politic*. [Italics supplied.]

The United States is both a body politic and a corporation. See *United States v. Maurice*, 26 Fed. Cas. No. 15747; *United States v. Tingey*, 30 U. S. 115, 127; *Dixon v. United States*, 1 Brockenbrough, 177, 181; *Res Publica v. Sweers*, 1 Dallas, 41, 44.

The suggestion alleges an indebtedness owing to the United States from Germany prior to October 6, 1917. It also alleges the filing of a notice of claim as provided by the Act. The United States is, therefore, entitled to have its claims adjudicated in these proceedings, since it is the holder of the money. It has been held by this Court that a suit against the Alien Property Custodian under Section 9 for the collection of a debt is in substance a suit against the United States. *Banco Mexicano v. Miller*, 263 U. S. 591. The United States being in substance, therefore, the possessor of the money out of which plaintiffs seek to secure the payment of the debt, may properly assert its claim against the money by means of a suggestion.

Assuming, but not admitting, that the United States is not a claimant under Section 9, it is nevertheless entitled in this proceeding to assert its rights and to have them passed upon

It is a general principle of law that the United States is not affected by any provision of a statute with respect to its claims, unless it is specifically mentioned in the statute. This Court has so held. In *Dollar Savings Bank v. United States*, 86 U. S. (18 Wall.) 227, an objection was raised to the form of an action which the United States adopted in suing for the recovery of taxes which were due. The United States brought an action of debt against the bank and the defendant insisted that the statute provided the method of suit, and the United States must comply with the provisions of the statute. In answering this contention, this Court said:

It must also be conceded to be a rule of the common law in England, and it is in Pennsylvania and many of the other States, that where a statute creates a right and provides a particular remedy for its enforcement the remedy is generally exclusive of all common-law remedies.

But it is important to notice upon what the rule is founded. The reason of the rule is that the statute, by providing a particular remedy, manifests an intention to prohibit other remedies, and the rule therefore rests upon a presumed statutory prohibition. It applies and it is enforced when anyone to whom the statute is a rule of conduct seeks redress for a civil wrong. He is confined to

the remedy pointed out in the statute, for he is forbidden to make use of any other. But by the Internal Revenue law the United States are not prohibited from adopting any remedies for the recovery of a debt due to them which are known to the laws of Pennsylvania. The prohibition, if any, either express or implied, contained in the enactment of 1866 are for others, not for the government. They may be obligatory upon tax collectors. They may prevent any suit at law by such officers or agents. But they are not rules for the conduct of the State. It is a familiar principle that the King is not bound by any act of Parliament unless he be named therein by special and particular words. The most general words that can be devised (for example, any person or persons, bodies politic or corporate) affect not him in the least, if they may tend to restrain or diminish any of his rights and interests. He may even take the benefit of any particular act, though not named. The rule thus settled respecting the British Crown is equally applicable to this government and has been applied frequently in the different States and practically in the Federal Courts. It may be considered as settled that so much of the royal prerogatives as belonged to the King in his capacity of *parens patriae*, or universal trustee, enters as much into our political state as it does into the principles of the British constitution.

This case presents the general proposition of law that the United States is not bound by the limitations of its statutes. The same thing has been held in other circumstances. See *Guaranty Co. v. Title Guaranty Co.*, 224 U. S. 152; *United States v. Herron*, 20 Wall. 251, 260, and *Lewis, Trustee, v. United States*, 92 U. S. 618.

With these cases in mind, it is the contention of the United States that if it or its officers have in possession funds of the Imperial German Government, the United States is entitled to assert its claims against Germany and to secure payment thereof out of those funds. This is always assuming that this Court finds that the funds now held in the Treasury of the United States in fact belonged, at the time of seizure, to the Imperial German Government.

CONCLUSION

From the foregoing it appears:

(1) That the lower court was without jurisdiction to entertain the present suits, because the court would be required to pass upon the acts and conduct of a foreign sovereign, which are subject only to negotiations between the political branches of the two governments.

(2) There is no evidence to show that there is in the possession of the Alien Property Custodian or in the Treasury of the United States any property or money which at the time of seizure was the money or property of the Imperial German Government, the alleged debtor.

(3) The suggestions filed by the United States of America should not have been stricken from the record, since the United States is a person within the meaning of the Trading with the Enemy Act, and if the money in question belonged to the Imperial German Government, it is entitled to set up its claims against the said government.

(4) Even if this Court should determine that the United States is not a person within the meaning of Section 9 of the Trading with the Enemy Act, nevertheless it is entitled to set up its claims against the German Government and have them paid out of the money here in question, if such money belongs to the Imperial German Government.

The decrees of the Court of Appeals of the District of Columbia should be reversed.

Respectfully submitted.

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urer of the United States, and the United
States of America.*

OCTOBER, 1925.

(10)

Office Supreme Court, U. S.

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No. 423

IN THE

Supreme Court of the United States

OCTOBER TERM, 1925

FRANK WHITE, AS TREASURER OF THE UNITED STATES,
AND FREDERICK C. HICKS, AS ALIEN PROPERTY
CUSTODIAN

Appellants

v.

THE MECHANICS SECURITIES CORPORATION

APPEAL FROM THE COURT OF APPEALS OF
THE DISTRICT OF COLUMBIA

**BRIEF ON BEHALF OF THE MECHANICS
SECURITIES CORPORATION**

G. C. CARLSON,

M. CARVER BELL,

Attorneys for Appellees.

INDEX

	Page
STATEMENT OF THE CASE	1
SUMMARY OF ARGUMENT	8
1. The Supreme Court of the District of Columbia was expressly given jurisdiction of these suits by Section 9 of the Trading with the Enemy Act, as amended, and the decree complained of does not infringe upon the sovereign rights of the Imperial German Government or its successor	9
II. The Appellee has established its debt and the record contains competent and conclusive evi- dence establishing the fact that there are now in the Treasury of the United States funds which, at the time of seizure by the Alien Property Custodian, belonged to the Imperial German Government, and out of which Appel- lee's debt can be lawfully paid	10
III. The rights of the United States to the funds formerly belonging to the Imperial German Government and now in the hands of the Treasurer for account of such Government, are subject to the provision of the Trading with the Enemy Act, as amended, and that Act does not authorize the United States to set up its claims against Germany as a defense to this suit	15

TABLE OF CASES

	Page
American Bank & Trust Co. v. Fed. Res. Bk., 262 U. S. 645,	13
Bodkin v. Edwards, 255 U. S. 223	13
Brewer-Elliott Oil & Gas Co. v. U. S., 269 U. S. 86	13
Delaney v. U. S., 263 U. S. 590	13
Grayson v. Harris, 267 U. S.—(Dec. 3-2-25)	13
Luckenbach v. McCahan Sugar Ref. Co., 248 U. S. 145.....	13
National Bank of Athens v. Shackelford, 239 U. S. 82....	13
Norton v. Larney, 266 U. S.—(Dec. 1-5-25)	13
Pope v. Allis, 115 U. S. 363	13
Second Russian Ins. Co. v. Miller, 267 U. S.—(Dec. 6-1-25)	13
U. S. v. State Investment Co., 264 U. S. 211.....	13
Wright-Blodgett Co. v. U. S., 236 U. S. 402.....	13
Yuma Co. Water Users Ass'n v. Schlecht, 262 U. S. 146....	13

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STATEMENT OF THE CASE.

This case is before this Court upon an appeal from a judgment of the Court of Appeals of the District of Columbia, entered on March 2, 1925, affirming a decree of the Supreme Court of the District of Columbia, which directed the Treasurer of the United States, upon presenta-

tion and surrender of certain Treasury Notes of the Imperial German Government, to pay to the Appellee the sum of \$500,000. and interest at the rate of six percent from July 15, 1919, out of funds aggregating Two Million Seven Hundred Fifteen Thousand, Five Hundred and Seventy-one Dollars (\$2,715,571.), belonging to the Imperial German Government and seized by the Alien Property Custodian.

The Appellee herein filed a bill of complaint under Section 9 of the Trading with the Enemy Act, as amended. (R. 1.) The Appellee is a corporation, incorporated under the laws of the State of New York, and a person not an enemy or an ally of an enemy within the meaning of the Trading with the Enemy Act. Before the United States entered the war on April 6, 1917, and with the assent of the State Department, the Appellee purchased the Treasury Notes of the Imperial German Government of the face value of Five Hundred Thousand Dollars (\$500,000.) as follows:

- (a) Issue May 6, 1916, Series 26, Lit. X, 96-100 inclusive, 111-115, inclusive, \$10,000 each.
- (b) Issue May 6, 1916, Series 26, Lit. X, 35-38, inclusive, \$25,000 each.
- (c) Issue May 24, 1916, Series 26, Lit. X, 1-6, inclusive, for \$50,000 each.

These notes were payable in American dollars on April 1, 1917. Upon payment of interest in advance, their maturity was extended to April 1, 1918.

The notes sued on constitute a debt within the meaning of the provisions of Section 9 of the Trading with the Enemy Act, as amended. Paragraph 8 of the bill of complaint alleges that the Alien Property Custodian now has in his possession, or to his credit in the Treasury of the

United States, funds of the Imperial German Government, an enemy within the meaning of the Act, which were paid and delivered to him under the provisions of the Trading with the Enemy Act, as amended, and which are available by law, sufficient to pay the entire indebtedness, both principal and past due interest, owing to the Appellee.

Paragraph 9 of the bill of complaint alleges that the present German Government has recognized the debt of the Imperial German Government as evidenced by these notes, and has admitted the indebtedness claimed by the Mechanics Securities Corporation, and has consented in writing to the payment of the debt out of available funds now in the possession of the Alien Property Custodian or to his credit in the Treasury of the United States.

The defendants in the Supreme Court of the District of Columbia filed a motion to dismiss the bill of complaint upon several grounds, in substance setting up that the Imperial German Government, or its successor, was a necessary party to the suit, and that "pursuant to the terms and provisions of the Trading with the Enemy Act, the amendments thereto, and the Treaties between the United States of America and Germany, signed August 25, 1921, and effective at the time of the filing of the bill of complaint herein, the United States of America became and ever since said time was and now is the owner of the moneys which Plaintiff seeks in this suit to subject to the payment of its claims." (R.4.)

The last stated ground for the motion to dismiss was not seriously argued and only becomes important in the light of the position subsequently taken by the Government. After argument, the motion to dismiss was overruled, and an answer filed. This answer admitted the incorporation and residence of the Appellee and the official character of the Custodian and Treasurer and admitted that the Appellee was a person not an enemy or ally of an enemy within the meaning of Section 9 of the Trading with the Enemy Act, as amended, and that on October 6, 1917,

the Imperial German Government was an enemy within the meaning of said act and continued to be such until it ceased to exist as a government.

As to the ownership of the notes sued on strict proof was called for. The notes were thereafter submitted to the attorneys for the Government and it was stipulated that they were genuine and authentic six per cent Treasury Notes of the Imperial German Government (R. 21), and they were produced in Court.

Paragraph 8 of the Answer (R. pp. 6, 7), is in response to the allegations of Paragraph 8 of the bill with respect to funds of the Imperial German Government in the hands of Appellants and is set out in full on p. 10 of this brief.

Paragraphs 11 to 42 inclusive of the answer set up certain separate defenses, which in substance asserted a claim by the Appellants as officers of the United States and by them on behalf of the United States itself against the money of the Imperial German Government in the possession of the Alien Property Custodian, or to his credit in the hands of the Treasurer of the United States, for:

- (a) The cost of the United States Army of Occupation in Germany Par. 11-25, inc., (R. p. 7).
- (b) For damages for the destruction by Germany of vessels requisitioned and/or chartered by the United States. (Par. 26-31, inc. R. pp. 9, 10).
- (c) For damages growing out of the payment of certain policies of insurance issued by the United States and covering property destroyed and persons injured and killed by Germany during the war. (Par. 32-42, inc. R. pp. 10, 11).

The answer concludes with a prayer that the Court adjudge and decree "that the United States of America is entitled to retain any and all moneys now in the possession of the Alien Property Custodian, and/or the Treasurer of the United States, which is now held in the name of the Imperial German government, to be applied upon the debt due by Germany to the United States of America."

Before bringing on the case upon its merits, the Appellee filed a motion to strike out the affirmative defenses as contained in paragraphs 11 to 42 inc. of the answer, the grounds for which appear on page 20 of the record. Among other things, it was asserted that these affirmative defenses did not constitute a cause of action, or a set off, or a counter-claim to the Appellee's bill of complaint which could be set up in a proceeding under the Trading with the Enemy Act, and, the Court having held that the Imperial German Government was not a necessary party to the suit, that the debit and credit relations between that Government and the United States of America were not in any way involved and could not be settled in a suit based on the Trading with the Enemy Act, and finally that the Custodian and Treasurer were not authorized or entitled under the Trading with the Enemy Act, as amended, to make any such defenses, or to claim any rights for the United States, or to set up any claims in its behalf against the German Government, or against the funds belonging to the German Government in their hands. After argument, the Appellee's motion to strike out the affirmative defenses was granted by the Court.

Thereafter, the case came on for hearing on the merits upon the bill of complaint, the answer of the Custodian and Treasurer, and evidence presented by the Appellee supporting the allegations of the bill of complaint. The attorneys for the Government, being present in open Court, presented no evidence controverting or denying the evi-

dence offered by the Appellee. The case was submitted for a decree upon the *sworn admissions* in the answer and the stipulation entered into between the parties. In the absence of any evidence in rebuttal, the Court entered a final decree on March 3, 1924. This decree established a debt in favor of the Appellee in the sum of Five Hundred Thousand Dollars (\$500,000.), and interest at six per cent from July 14, 1919, and ordered the Appellant White to pay this indebtedness out of money belonging to the Imperial German Government, upon the surrender of the notes held by the Appellee.

On March 17, 1924, fourteen days after the entry of the final decree, and after the expiration of the time allowed under the rules of the Court for filing a petition for a new trial, or a motion to vacate the decree, a petition for rehearing was filed and a rule to show cause was issued. (R. p. 23.) This petition set up several alleged legal objections to the decree of March 3, 1924, made certain statements of fact and attempted to cast doubt upon the determination of ownership by the Alien Property Custodian, acting for the President, by saying:

"It may well be that the proof then submitted to the Custodian in the light of the now apparent impelling motives therefor and in view of subsequently discovered evidence, will not, if subjected to tests of strict proof on judicial proceedings, establish the fact that the Imperial German Government was the origin of the funds in question." (R. p. 25.)

The Appellee filed a motion to discharge the rule to show cause and also filed a sworn answer. Paragraph 4 of this answer contains the following:

"That, on information and belief, the Defendant, Miller, did, on March 8, 1923, after investigation,

determine that Two Million Two Hundred Thousand Dollars (\$2,200,000.), out of a certain fund of Five Million Dollars (\$5,000,000.), was, at the time it was received by him 'held for, by, on account of, and for the benefit of the Imperial German Government', and on March 10, 1923, the Defendant, Miller, directed the Treasurer of the United States to transfer said sum of money from Trust No. 9322 to Trust No. 555, special, to the credit of the Imperial German Government."

Paragraph 8 of this answer contains the following:

"The Plaintiff further denies, upon information and belief, that there is any 'subsequently discovered evidence' which could, or should affect the final judgment of this Court, and further says that if there is any such evidence, the Defendant should be required to disclose the same." (R. 30.)

On April 14, 1924, there was a hearing in open Court upon the rule to show cause why the case should not be reheard and the decree of March 3, 1924, vacated. The Appellants did not offer any evidence in support of their petition for a rehearing. No "subsequently discovered evidence" was presented and the case was heard upon their petition and motion, the answer of the Appellee and argument of counsel, and after consideration by the Court, the petition for rehearing was dismissed and the motion to vacate the final decree was denied.

SUMMARY OF ARGUMENT.

In spite of the fact that there are seventeen assignments of error, there are but four points argued in Appellants' brief. These points will be discussed under the following propositions:

I.

The Supreme Court of the District of Columbia was expressly given jurisdiction of these suits by Section 9 of the Trading with the Enemy Act, as amended, and the decree complained of does not infringe upon the sovereign rights of the Imperial German Government or its successor.

II.

The Appellee has established its debt and the record contains competent and conclusive evidence establishing the fact that there are now in the Treasury of the United States funds which, at the time of seizure by the Alien Property Custodian, belonged to the Imperial German Government, and out of which Appellee's debt can be lawfully paid.

III.

The rights of the United States to the funds formerly belonging to the Imperial German Government and now in the hands of the Treasurer for account of such Government, are subject to the provision of the Trading with the Enemy Act, as amended, and that Act does not authorize the United States to set up its claims against Germany as defense to this suit.

ARGUMENT.

I.

THE SUPREME COURT OF THE DISTRICT OF COLUMBIA WAS EXPRESSLY GIVEN JURISDICTION OF THESE SUITS BY SECTION 9 OF THE TRADING WITH THE ENEMY ACT, AS AMENDED, AND THE DECREE COMPLAINED OF DOES NOT INFRINGE UPON THE SOVEREIGN RIGHTS OF THE IMPERIAL GERMAN GOVERNMENT OR ITS SUCCESSOR.

This case is one of the group of cases involving substantially the same questions, in which are included cases Nos. 424, 425, 430 and 431. We have filed a separate brief for Appellees in Nos. 424 and 425, and this point and the subject matter thereof are precisely the same as point I of that brief. For the sake of avoiding repetition, the Court's attention is respectfully directed to the argument contained under Point 1 therein. (P. 7).

II.

THE APPELLEE HAS ESTABLISHED ITS DEBT AND THE RECORD CONTAINS COMPETENT AND CONCLUSIVE EVIDENCE ESTABLISHING THE FACT THAT THERE ARE NOW IN THE TREASURY OF THE UNITED STATES FUNDS WHICH, AT THE TIME OF SEIZURE BY THE ALIEN PROPERTY CUSTODIAN, BELONGED TO THE IMPERIAL GERMAN GOVERNMENT, AND OUT OF WHICH APPELLEE'S DEBT CAN BE LAWFULLY PAID.

The record shows that this case came on to be heard upon the merits on March 3, 1924, on the bill of complaint of the Appellee and the sworn answer of the Custodian and the Treasurer, and that the attorneys for the Appellee presented evidence supporting the allegations of the bill of complaint. The attorneys for the Government were present in open Court but they did not offer any evidence.

The answer admitted substantially all the allegations of the bill except those contained in paragraph 8, which read as follows:

"That the Alien Property Custodian now has in his possession, or to his credit in the Treasury of the United States, funds of the Imperial German Government which were paid and delivered to him under the provisions of said Trading with the Enemy Act, as amended, and which are available by law, sufficient to pay the entire indebtedness, both principal and past due interest, owing to Complainant." (R. p. 2.)

Paragraph 8 of the answer was as follows:

"Answering the averments of paragraph numbered 8 of the bill of complaint, these defendants separately and severally say that the Alien Prop-

erty Custodian, acting under and pursuant to the terms and provisions of the Trading with the Enemy Act, the amendments thereto, and the Proclamations and Executive Orders issued thereunder, after investigation, determined that the Imperial German Government was an enemy within the purview and meaning of the said act, the amendments thereto, and the Proclamations and Executive Orders issued thereunder, and that certain moneys were owing or belonging to, held for, by, on account of, and for the benefit of the said enemy. Thereupon, the Alien Property Custodian required the said moneys and other property to be conveyed, transferred, assigned, delivered, and/or paid to him, to be by him held, administered, and accounted for as provided by law. Thereafter the demands of the Alien Property Custodian were fulfilled and he received certain moneys, pursuant to the said demand, and paid the same to the Treasurer of the United States, in accordance with the provisions of the Trading with the Enemy Act. The amount of said moneys received as aforesaid is, at the present time, approximately Five Hundred Fifteen Thousand Five Hundred Seventy-one Dollars (\$515,571.) and is held by the Alien Property Custodian in trust No. 555."

"Further answering said paragraph, these defendants separately and severally say that the Alien Property Custodian, acting under and pursuant to the terms and provisions of the Trading with the Enemy Act, the amendments thereto, and the Proclamations and Executive Orders issued thereunder, after investigation, determined that certain money was by Lee, Higginson & Company, of Boston, Massachusetts, in the approximate amount of Five Million Dollars (\$5,000,000.) held for, by, on account of, and for the benefit of an unknown enemy. Thereupon the Alien Property Custodian required

the said money to be paid to him. Thereafter the demand of the Alien Property Custodian was fulfilled, and he received as aforesaid the said sum of Five Million Dollars (\$5,000,000.), which he paid to the Treasurer of the United States, in accordance with the terms and provisions of the Trading with the Enemy Act and the said money was thereupon placed to the credit of unknown enemy No. 1, in trust No. 9322. Thereafter and to-wit, on or about the 8th day of March, 1923, the Alien Property Custodian determined that Two Million Two Hundred Thousand Dollars (\$2,200,000.) of the Five Million Dollars (\$5,000,000.) received as aforesaid was at the time of the receipt thereof by the Alien Property Custodian, held for, by, on account of, and for the benefit of the Imperial German Government. Thereupon the Alien Property Custodian directed the Treasurer of the United States to transfer from trust No. 9322 the sum of Two Million Two Hundred Thousand Dollars (\$2,200,000.) and to place the same to the credit of the Imperial German Government, opening a special account designated 'Trust 555, Special'. Thereafter the Treasurer of the United States, pursuant to the said instructions, so transferred the said Two Million Two Hundred Thousand Dollars (\$2,200,00.) to said trust."

"Further answering said paragraph these defendants say that they have no further knowledge, information, or belief with respect to the ownership of any of the said money received as aforesaid by the Alien Property Custodian, and this Court must determine out of what, if any, of the money held by the Alien Property Custodian, and / or the Treasurer of the United States, any claim which these Defendants may establish must be paid." (R. p. 6.)

The admissions of the Custodian and Treasurer in the above quoted paragraph of the answer, together with the stipulation with respect to the ownership and authenticity

of the notes sued on were relied upon by the Appellee as competent, and in the absence of rebuttal, conclusive evidence of ownership by the German Government of the funds in controversy and sufficient to support the decree herein complained of. (*Pope v. Allis*, 115 U. S. 363.)

The sufficiency of this evidence was attacked in the Court below for the same reasons advanced under Point II of the Government's brief in cases numbered 424 and 425. In a memorandum opinion, the Court below affirmed the decree of the Supreme Court of the District of Columbia on the authority of the opinion and judgment rendered in cases numbered 424 and 425 and other cases of the same character. All questions of fact have been found by the two lower Courts in favor of the Appellee and against the Alien Property Custodian and the Treasurer of the United States. The well settled rule of this Court that where two Courts have reached the same conclusion upon a question of fact, it will be accepted here unless clearly erroneous, should therefore apply.

Second Russian Insurance Co. v. Miller, 267 U. S.
— (Dec. 6-1-25);

Grayson v. Harris, 267 U. S. —, (Dec. 3-2-25)

Norton v. Larney, 266 U. S. —, (Dec. 1-5-25)

U. S. v. State Investment Co., 264 U. S. 211

Delaney v. U. S., 263 U. S. 590

Yuma Co. Water Users Ass'n v. Schecht, 262 U.
S. 146

American Bank & Trust Co. v. Fed Res. Bk., 262
U. S. 645

Brewer-Elliott Oil & Gas Co. v. U. S., 260 U. S.
86

Bodkin v. Edwards, 255 U. S. 223

Luckenbach v. McCahan Sugar Ref. Co., 248 U.
S. 145

National Bank of Athens v. Shackelford, 239 U.
S. 82

Wright-Blodgett Co. v. U. S., 236 U. S. 402.

Appellants' brief in this case refers to their brief in cases Nos. 424 and 425, and they rely upon the same arguments with respect to the statutory powers of the Custodian and the effect of a determination of ownership by him. These arguments have been answered at some length in the brief for Appellees filed by us in cases Nos. 424 and 425. Reference is respectfully made to pp. ~~34~~³⁴ of that brief.

Appellants' counsel are in error in saying that in this case "there is no evidence . . . to show the ownership of the money in the Imperial German Government at the time of seizure." (Br. p. 18.) This statement overlooks the admission by the Custodian in paragraph 8 of the answer that on March 8, 1923, he determined that \$2,200,000. received by him as set forth in the same paragraph "was at the time of the receipt thereof," held for, by, on account of, and for the benefit of the Imperial German Government.

It is therefore respectfully submitted that the findings of fact by the two lower Courts with respect to the ownership by the German Government of the funds in question should not be disturbed by this Court.

III.

THE RIGHTS OF THE UNITED STATES TO THE FUNDS FORMERLY BELONGING TO THE IMPERIAL GERMAN GOVERNMENT AND NOW IN THE HANDS OF THE TREASURER FOR ACCOUNT OF SUCH GOVERNMENT, ARE SUBJECT TO THE PROVISIONS OF THE TRADING WITH THE ENEMY ACT, AS AMENDED, AND THAT ACT DOES NOT AUTHORIZE THE UNITED STATES TO SET UP ITS CLAIMS AGAINST GERMANY AS A DEFENSE TO THIS SUIT.

The alleged rights of the United States with respect to the funds in controversy in this case were raised by separate or affirmative defenses contained in paragraphs 11 to 42, inclusive, of the answer. The claims asserted were for

1. *The cost of maintaining the military forces of the United States in the occupation of German territory.* It appears from paragraph 22 of the answer that accounts of the cost of such occupation have been stated between Germany and the United States and "that said statements made as aforesaid were each and all made, rendered, and presented to the Reparations Commission, created and established by the Treaty of Versailles, and which said Commission, so established and created, was at all times acknowledged by Germany as the proper body to which such accounts should be presented and rendered." (R. 8.)

2. *Damages for the destruction by Germany of vessels owned, requisitioned and/or chartered by the United States.* It appears from paragraph 28 of the answer "that Germany has agreed to reimburse and pay to the United States of America" for "the destruction of the said property." The answer does not state how Germany had

agreed to pay, but it is fair to assume that this agreement was made through the Reparations Commission and the Treaty of Versailles. (R. 9.)

3. *Damages growing out of the payment of certain policies of insurance issued by the United States and covering property destroyed and persons injured and killed by Germany during the war, for the payment of which policies, the United States claimed to be subrogated to all rights against Germany.* (R. 10.) Provision has been made by agreement between Germany and the United States establishing a Mixed Claims Commission to determine the liability and fix the amount of the awards due from the Imperial German Government to the United States. The Court will take judicial notice of the fact that an award has been made by this Commission for the particular claims set up as a defense to this suit.

Appellee filed a motion to strike out the affirmative defenses setting up these claims, which was granted by the Supreme Court of the District of Columbia and this action was affirmed by the judgment of the Court of Appeals of the District of Columbia. This action seems so clearly right as to scarcely require argument.

The claims of the United States are urged substantially upon two grounds—

1. That on "general principle" the United States is entitled to assert its rights and have them passed upon in this suit;

2. That the United States is a "person" within the meaning of Section 9 of the Trading with the Enemy Act, and may file notice of claim as provided under that section or bring suit to compel the payment of indebtedness

due it by the Imperial Government of Germany. (Br. 20-23.)

We believe that in the discussion contained on pp. ~~42~~ and ~~51~~ of the Appellees' brief in cases Nos. 424 and 425, it has been shown that these grounds are not sufficient to justify the relief claimed. The Court is respectfully referred to the arguments there set forth.

The decree of the Court of Appeals of the District of Columbia should be affirmed.

Respectfully submitted,

C. C. CARLIN,
M. CARTER HALL,
Attorneys for Appellee.

November 20, 1925.

(11)

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No. 424, 425

IN THE
Supreme Court of the United States

OCTOBER TERM, 1925

N. 424

THE UNITED STATES OF AMERICA, APPELLANT

v.

SECURITIES CORPORATION GENERAL, APPELLEE

No. 425.

FRANK WHITE, AS TREASURER OF THE UNITED STATES,
AND FREDERICK C. HICKS, AS ALIEN PROPERTY
CUSTODIAN

Appellants

v.

SECURITIES CORPORATION GENERAL, APPELLEE

APPEAL FROM THE COURT OF APPEALS OF
THE DISTRICT OF COLUMBIA

BRIEF ON BEHALF OF SECURITIES
CORPORATION GENERAL

C. C. CARLIN,
M. CARTER HALE,
Attorneys for Appellees.

TABLE OF CONTENTS

	Page
STATEMENT OF THE CASE	1
SUMMARY OF ARGUMENT	6
I. The Supreme Court of the District of Columbia was expressly given jurisdiction of these suits by Section 9 of the Trading with the Enemy Act, as amended, and the decrees complained of do not infringe upon the Sovereign rights of the Imperial German Government, or its successor	7
(a) Under its constitutional war power, Congress has the full and unrestricted right to seize and confiscate enemy property	9
(b) The primary purpose of the Trading with the Enemy Act was to <i>seize</i> enemy property in order to prevent its use against the United States. One of its secondary purposes was to provide for the payment of debts due from enemies to American citizens, <i>before the termination of the war</i>	12
(c) These suits are not in any real sense suits against the Imperial German Government, and do not, within the meaning of the cases cited in Appellant's brief, involve an adjudication of rights or obligations of a foreign sovereign in contravention of established principles of international law	15
II. The Appellees have established their debts, and the record contains competent and conclusive evidence establishing the fact that there are now in the Treasury of the United States funds which, at the time of seizure by the Alien Property Custodian, belonged to the Imperial German Government, and out of which Appellees' debts can be lawfully paid..	24
III. The rights of the United States to the funds formerly belonging to the Imperial German Government, and now in the hands of the Treasurer for account of such Government, are subject to the provisions of the Trading with the Enemy Act, as amended, and that Act does not authorize the United States to set up its claim against Germany as a defense to this suit	47
(1) On "general principle" the United States is not entitled to assert its rights and have them passed upon in these suits..	49
(2) The United States is not a "person" entitled to file a claim under Section 9 of the Trading with the Enemy Act....	51

TABLE OF CASES.

	Page
Ahrenfeldt v. Miller, 262 U. S. 60.....	51
American Banana Co. v. United Fruit Co., 213 U. S. 347	20
American Bank & Trust Co. v. Fed Res. Bk., 262 U. S. 645	24
Bliss v. Nichols, 12 Allen 443	31
Bodkin v. Edwards, 255 U. S. 223	24
Brewer-Elliott Oil & Gas Co. v. U. S., 260 U. S. 86	24
Brown v. U. S., 8 Cranch 111	17
Central Bridge v. Lowell, 15 Gray 106	31
Central Union Trust Co. v. Garvan, 254 U. S. 554	39-44-51
Commercial Trust Co. v. Miller, 262 U. S. 51	39-51
Cook v. Barr, 44 N. Y. 156	31
Delaney v. U. S., 263 U. S. 590	24
DeWhelpdale v. Milburn, 5 Price 485	31
Dollar Savings Bank Case, 86 U. S. 227	51
Elliott v. Hayden, 104 Mass. 180	31
Garvan v. Bonds, 265 Fed. 447	44
Grayson v. Harris, 267 U. S. —, (dec. 3-2-25)	24
Greenleaf, Evidence, Sections 552 and 555	31
Haycraft v. U. S., 22 Wall. 81	17
Herrera v. U. S., 222 U. S. 558	11-17
Hijo Case, 194 U. S. 315	17
Koscinski v. White, 286 Fed. 215	13
Lamar v. Browne, 92 U. S. 187	17
Luckenbach v. McCahan Sugar Ref. Co., 248 U. S. 145..	24
Miller v. Robertson, 267 U. S. —, (dec. 11-17-24)....	12
Miller v. U. S., 11 Wall. 268	10-17
Munich Reinsurance Co. v. First Reinsurance Co. 300 Fed. 345	17-44
National Bank of Athens v. Shackelford, 239 U. S. 82..	24
Norton v. Larney, 266 U. S. —, (dec. 1-5-25)	24
Oetjen v. Central Leather Co., 246 U. S. 302	14
Pope v. Allis, 115 U. S. 363	31
Ricaud v. American Metal Co., 246 U. S. 304	20
Rose v. Himely, 4 Cranch 272	17
Second Russian Ins. Co. v. Miller, 267 U. S. —, (dec. 6-1-25)	24
Siggfehr v. Miller, 285 Fed. 953	44
Sprott v. U. S., 20 Wall. 459	17
Stoebr v. Wallace, 255 U. S. 239	39-44
Studdy v. Sanders, 2 D. & R. 347	31
Taylor on Evidence, Section 1753	31
Underhill v. Hernandez, 168 U. S. 250	19
U. S. v. Alexander, 2 Wall. 404	17
U. S. v. Padleford, 9 Wall. 531	17
U. S. v. State Investment Co., 264 U. S. 211	24
U. S. Trust Co. v. Miller, 262 U. S. 58	51
Wright-Blodgett Co. v. U. S., 236 U. S. 402	24
Young v. U. S., 97 U. S. 39	17
Yuma Co. Water Users Ass'n v. Schlecht, 262 U. S. 146	24

Nos. 424, 425

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OCTOBER TERM, 1925

N. 424

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v.

SECURITIES CORPORATION GENERAL, APPELLEE

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AND FREDERICK C. HICKS, AS ALIEN PROPERTY
CUSTODIAN

Appellants

v.

SECURITIES CORPORATION GENERAL, APPELLEE

APPEAL FROM THE COURT OF APPEALS OF
THE DISTRICT OF COLUMBIA

**BRIEF ON BEHALF OF SECURITIES
CORPORATION GENERAL**

STATEMENT OF THE CASE.

These cases are before this Court upon appeals from judgments of the Court of Appeals of the District of Columbia, entered on March 2, 1925, affirming decrees of the Supreme Court of the District of Columbia. In case No. 424, the decree directed the Treasurer of the United States, upon presentation and surrender of certain

Treasury Notes of the German Imperial Government, to pay the Appellee the sum of \$250,000, and interest at the rate of 6 per cent from July 14, 1919, out of funds aggregating \$2,715,571. (Two Million Seven Hundred and Fifteen Thousand Five Hundred and Seventy-one Dollars) belonging to the Imperial German Government and seized by the Alien Property Custodian.

In case No. 425, the decree of the Supreme Court of the District of Columbia granted a motion to strike out a suggestion filed on behalf of the United States of America.

The above entitled cases are two of a group of 23 cases now pending in this Court and numbered 423 to 445, both inclusive.

Stipulations have been entered into that the disposition of cases Nos. 427, 429, 431, 433, 435, 437, 439, 441, 443 and 445 shall be the same as in case No. 425, and that the disposition of cases Nos. 426, 428, 430, 432, 434, 436, 438, 440, 442 and 444 shall be the same as in case No. 424.

Because of certain slight differences in the record, case No. 423 will be separately briefed. Its disposition should follow that of case No. 425.

The Appellee herein filed its Bill of Complaint under Section 9 of the Trading with the Enemy Act, as amended, alleging that it was a person not an enemy, or ally of an enemy, within the meaning of the Trading with the Enemy Act. Before the United States entered the war on April 6, 1917, and with the assent of the State Department, the Appellee purchased Treasury Notes of the Imperial German Government having a face value of \$250,000. These notes were payable in American dollars on April 1, 1917. Upon payment of interest in advance, their maturity was extended to April 1, 1918.

The notes sued on constitute a debt within the meaning of the provision of Section 9 of the Trading with the Enemy Act, as amended. Paragraph 8 of the Bill of Com-

plaint alleges that the Alien Property Custodian now has in his possession, or to his credit in the Treasury of the United States, funds of the Imperial German Government, an enemy within the meaning of the Act, which were paid and delivered to him under the provisions of the Trading with the Enemy Act, as amended, and which are available by law, sufficient to pay the entire indebtedness, both principal and past due interest, owing to the Appellee.

Paragraph 9 of the Bill of Complaint alleges that the present Government has recognized the debt of the Imperial German Government, has admitted the indebtedness claimed, and has consented in writing to the payment of the debt out of available funds now in the possession of the Alien Property Custodian, or to his credit in the Treasury of the United States.

The Defendants in the Supreme Court of the District of Columbia, Miller and White, filed a motion to dismiss the Bill of Complaint upon several grounds, in substance setting up that the Imperial German Government, or its successor, was a necessary party to the suit, and that "pursuant to the terms and provisions of the Trading with the Enemy Act, the amendments thereto, and the Treaties between the United States of America and Germany, signed August 25, 1921, and effective at the time of the filing of the Bill of Complaint herein, the United States of America became, and ever since said time was, and now is, the owner of the moneys which Plaintiff seeks in this suit to subject to the payment of its claims."

The last stated ground for the motion to dismiss was not seriously argued, and becomes important only in the light of the position subsequently taken by the Government. After argument, the motion to dismiss was overruled and an answer filed.

This answer admitted the allegations of paragraphs 1, 2, 4, 5 and 10 relating to the citizenship and residence of the Appellee, the official character of the Custodian and the Treasurer, that the Appellee was a person within the

meaning of Section 9 of the Trading with the Enemy Act, and that the Imperial German Government was, on October 6, 1917, an enemy within the meaning of said Act, and continued to be such until it ceased to exist as a Government. As to all of the other allegations in the bill, strict proof was demanded.

After the filing of the answer by the Defendants, White and Miller, the United States, by the Attorney General, filed a suggestion as to the rights of the United States. The Appellee filed a motion to strike out the suggestion upon grounds which appear on page 16 of the record, case No. 424. Among these grounds were the following:

"3. Because the said suggestion puts in issue the debit and credit relations between the Imperial German Government and the United States of America, which said relations are not in any way involved in this suit, to which neither the Imperial German Government or the United States of America are proper parties."

"5. Because the claim of the United States of America as set forth in said suggestion is the same as the claim made in its behalf by counsel for the Defendants in the affirmative defenses filed in the case of the Mechanics Securities Corporation against the same defendants, pending in this Court as Equity Cause No. 41284, said claim having been rejected by the Court and said affirmative defenses having been stricken out."

"6. Because the United States of America is not authorized by law to file a notice of claim under Section 9 of the Trading with the Enemy Act, as amended, for loss or injury alleged to have been sustained by reason of the wrongful or tortious acts of the Imperial German Government."

"8. Because this Court has no jurisdiction to pass upon or determine the rights of the United States of America, if it has any, to become subrogated as against the Imperial German Government for any sums of money disbursed by it under policies of insurance for the loss of vessels, cargoes, or lives."

"11. Because it appears on the face of the suggestion, that, by treaty, the Imperial German Government and its successors have agreed with the United States of America to make payments and restitutions, including therein the claim of the United States as set up in said suggestion, and therefore this Court has no jurisdiction of the claims of the United States against the Imperial German Government, said claims being a matter for diplomatic intercourse between the respective sovereigns."

After argument, the motion was granted by an order which contained the following:

"The Court having considered the said suggestion and the facts therein brought to its attention, carefully and with deliberation to which such a suggestion is entitled, and being of opinion that the facts therein alleged are immaterial and irrelevant to this cause, and that the said suggestion is insufficient in law to maintain a claim on behalf of the United States," etc.

Thereafter, the case came on for hearing on the merits upon the Bill of Complaint, the answer of the Appellants and the evidence of the parties. The final decree in favor of the Appellee, which is the subject of this appeal, was entered on June 19, 1924. (R. 9, case 425).

SUMMARY OF ARGUMENT

In spite of the numerous assignments of error, there are but three points argued in Appellants' brief. These points will be discussed under the following propositions which apply generally to all of the cases covered by the stipulation above referred to:

I

The Supreme Court of the District of Columbia was expressly given jurisdiction of these suits by Section 9 of the Trading with the Enemy Act, as amended, and the decrees complained of do not infringe upon the sovereign rights of the Imperial German Government, or its successor.

II

The Appellees have established their debts, and the record contains competent and conclusive evidence establishing the fact that there are now in the Treasury of the United States funds which, at the time of seizure by the Alien Property Custodian, belonged to the Imperial German Government, and out of which Appellees' debts can be lawfully paid.

III

The rights of the United States to the funds formerly belonging to the Imperial German Government, and now in the hands of the Treasurer for account of such Government, are subject to the provisions of the Trading with the Enemy Act, as amended, and that Act does not authorize the United States to set up its claim against Germany as a defense to this suit.

I

THE SUPREME COURT OF THE DISTRICT OF COLUMBIA WAS EXPRESSLY GIVEN JURISDICTION OF THESE SUITS BY SECTION 9 OF THE TRADING WITH THE ENEMY ACT, AS AMENDED, AND THE DECREES COMPLAINED OF DO NOT INFRINGE UPON THE SOVEREIGN RIGHTS OF THE IMPERIAL GERMAN GOVERNMENT, OR ITS SUCCESSOR.

Section 9 of the Trading with the Enemy Act authorizes any person not an enemy, or ally of enemy. . . to whom any debt may be owing from an enemy, or ally of enemy, whose property, or any part thereof, shall have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian, or seized by him under said Act, and held by him or by the Treasurer of the United States, to file with the Custodian a notice of his claim under oath, and in such form and containing such particulars as the said Custodian shall require. The Act further provides that such a debt may be paid through executive allowance by the President, or, failing that, by decree of Court.

The Claimant, in such case, "may institute a suit in equity in the Supreme Court of the District of Columbia," and if the debt claimed is established, "the Court shall order payment, conveyance, transfer, assignment or delivery to said Claimant of the money or other property so held by the Alien Property Custodian, or by the Treasurer of the United States, or the interest therein to which the Court shall determine said Claimant is entitled."

Section 2 of the Trading with the Enemy Act defines a number of terms used therein, including the word "person" and the word "enemy."

"The word 'person' as used herein shall be deemed to mean an individual, partnership, association, company, or other incorporated body of individuals, or corporations, or body politic."

"The word 'enemy' as used herein, shall be deemed to mean, for the purposes of such trading and of this Act . . . (b) The government of any nation with which the United States is at war, or any political or municipal subdivision thereof, or any officer, official, agent, or agency thereof."

It is conceded in Appellants' brief that the Plaintiffs in these cases were not enemies, or allies of enemies, (Br. p. 27, case 425). It is further conceded that, according to the above definition in Section 2 of the Act, the Imperial German Government is an "enemy." (Br. p. 28, case 425). It is further conceded that Plaintiffs in the trial court established the fact that the debts claimed were owing to them from the Imperial German Government prior to October 6, 1917. (R. 16, case 425).

These conceded facts are sufficient to bring the case within the jurisdiction of the Supreme Court of the District of Columbia, as expressly provided by Section 9 of the Trading with the Enemy Act, as amended, and to authorize the entry of decrees ordering the payment of the debts so established by the Treasurer of the United States.

However, in order to avoid the effect of the express language used by Congress, it is argued for the Appellants' that the Act was not intended to provide "for suits in those cases where the obligation was owing by a sovereign government." (B. p. 28, case 425). The argument is supported by reference to general principles which are not denied, but which have no application to the facts of these cases. While the authorities cited support the general principle that the Courts of the United States will not under-

take to pass upon the acts of a foreign sovereign done in its own territory, not one of them has any bearing upon the proper construction to be given to an act of Congress passed in the exercise of its Constitutional "war power" and intended to operate upon the rights and property of private and public enemies during the existence of the Great War.

While beginning the argument with respect to the jurisdiction of the Supreme Court of the District of Columbia by a question as to the *intention* of Congress, in passing the Trading with the Enemy Act, Appellants' counsel concludes with this unqualified and amazing statement.

"Congress can, therefore, not provide for suits involving the obligations of the Imperial German Government."

It is believed that the Appellants' argument can be disposed of by a brief reference to the *power* and *purpose* of Congress in passing the Trading with the Enemy Act.

(a)

UNDER ITS CONSTITUTIONAL WAR POWER, CONGRESS HAS THE FULL AND UNRESTRICTED RIGHT TO SEIZE AND CONFISCATE ENEMY PROPERTY.

By Art. 1, Sec. 8 Cl. 11, of the Constitution, Congress is given power "to declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water. In the leading case of *Brown v. U. S.*, 8 Cranch 110, Chief Justice Marshall, with respect to the confiscation of enemy property, said:

"Respecting the power of Government no doubt is entertained. That war gives to the sovereign full right to take the persons and confiscate the property of the enemy, wherever found, is conceded.

The mitigations of this rigid rule, which the humane and wise policy of modern times has introduced into practice, will more or less affect the exercise of this right, but cannot impair the right itself. That remains undiminished, and when the sovereign authority shall choose to bring it into operation, the judicial department must give effect to its will."

In the case of *Miller v. United States*, 11 Wall. 268, certain acts of Congress passed during the Civil War, authorizing the confiscation of various kinds of enemy property, were attacked. It was urged that these Acts of Congress were in conflict with Constitutional provisions. The Court said:

"The question, therefore, is, whether the action of Congress was a legitimate exercise of the war power. The Constitution confers upon Congress, expressly, power to declare war, grant letters of marque and reprisal, and make rules respecting captures on land and water. Upon the exercise of these powers no restrictions are imposed. Of course, the power to declare war involves the power to prosecute it by all means and in any manner in which war may be legitimately prosecuted. It therefore includes the right to seize and confiscate all property of an enemy and to dispose of it at the will of the captor. This is, and always has been, an undoubted belligerent right."

Again, with respect to the exercise of this admitted power, the Court said:

"Plainly, it was competent for Congress to determine how far it would exert belligerent rights, and it is quite too large a deduction from the fact that the property only of certain classes of enemies was directed to be confiscated, that it was not intended to confiscate the property of enemies at all."

In the case of *Herrera v. U. S.* 222 U. S. 558, there was a claim for the value of the use by the military authorities of a Spanish merchant vessel captured in the harbor of Santiago. In affirming a judgment of dismissal by the Court of Claims, this Court after distinguishing authorities relied on to support the claim, said with respect to them:

"It was not intended to express a limitation upon the undoubted belligerent right to use and confiscate all property of an enemy and to dispose of it at will."

It must, therefore, be conceded that Congress had the undoubted right in the exercise of the war power to absolutely confiscate all property or money belonging to the German Government or to German Nationals wherever found in this Country. This applies equally to tangible and intangible property. It had the right to collect debts due Germany and to appropriate the proceeds for whatever purpose it desired, and it had the equal right to require the payment of the debts of Germany due to American citizens out of property or money belonging to it and seized by authority of an act of Congress. Having the greater power to seize and even to confiscate money formerly belonging to the German Government, it also had the lesser power to seize and dispose of it in its discretion. It had the power to appropriate money seized by it for the payment of debts due by the German Government to American citizens upon such terms as it might prescribe. In language of the *Miller* case, *Supra*, it was competent for Congress to determine how far it would exert its belligerent rights.

Therefore, it necessarily follows, from the authorities cited herein, that Appellants' contention as to the lack of power in Congress to provide for suits involving the obligations of the German Government cannot be maintained. It only remains to determine what was the pur-

pose of Congress in this respect, as evidenced by Section 9 of the Trading with the Enemy Act.

(b)

THE PRIMARY PURPOSE OF THE TRADING WITH THE ENEMY ACT WAS TO SEIZE ENEMY PROPERTY IN ORDER TO PREVENT ITS USE AGAINST THE UNITED STATES. ONE OF ITS SECONDARY PURPOSES WAS TO PROVIDE FOR THE PAYMENT OF DEBTS DUE FROM ENEMIES TO AMERICAN CITIZENS, BEFORE THE TERMINATION OF THE WAR.

With full consciousness of its power, Congress passed the Trading With the Enemy Act. It must be construed in the light of conditions existing at the time of its passage.

Before the enactment of the Trading With the Enemy Act, actions and suits could have been brought, in proper cases, by persons not enemies, against enemies owning property located within the jurisdiction of the Court in which such suits were brought, by attachment, garnishment, or similar appropriate proceedings *in rem*. This was true, even after the commencement of the war between the United States and Germany, although after that event, the property of such enemies was subject, to seizure or confiscation by the United States. Under these circumstances, Congress determined that the property of alien enemies in this country should be taken over and that trade with them should cease.

No better statement of the intention of Congress can be found than in the words of Mr. Justice Butler in *Miller v. Robertson*, 267 U. S. —, decided November 17, 1924—

"The purpose was to weaken enemy countries by depriving their supporters of power to give aid.

But the seizure of money and property of enemies and their allies would tend to hinder and might embarrass or ruin those having business transactions with them. By the taking, the property seized would be put out of reach of persons claiming it and beyond the power of creditors to attach it for debt. The purpose of Section 9 was to prevent or lessen losses and inconvenience liable to result to non-enemy persons. This provision is highly remedial and should be liberally construed to effect the purposes of Congress and to give remedy in all cases intended to be covered." (Citing cases.)

While the Act is to be liberally construed in favor of American citizens, in order to effect its remedial purposes, it is not necessary that it should be so construed with respect to the rights, if any, or the equities of the enemy owners. The purpose was to weaken enemy countries by depriving their supporters of power to give aid.

As said by Judge Tuttle in *Koscinski v. White*, *Treas. et al*, 286 Fed. 215—

"The object, and the provisions for accomplishing such objects, were, to be sure, harsh; but it must be borne in mind that the Act in question was war time legislation, and not only the best interests, but the very existence, of the nation required severe and even harsh measures in dealing with the enemies with which the country was at war."

The Trading with the Enemy Act makes no distinction between enemy governments and enemy individuals. It does not make any difference between the German Government and the German Nationals. In fact, in order that there should be no doubt upon the subject, in Section 2,

subsection (b), Congress specifically defined the word "enemy" as including "the government of any nation with which the United States is at war, or any political or municipal subdivision thereof, or any officer, official, or agent thereof." Notwithstanding this plain and simple language, it is apparently seriously argued that Section 9 was not intended by Congress to apply to suits by American citizens for debts due by an enemy government. The argument is both illogical and unsound. While Appellants' counsel do not venture to say that Congress did *not* intend to seize the property of enemy *governments* as well as individual enemies, they seek to draw a distinction not justified by the language of Section 9, and say that, although Congress intended to authorize the *seizure* of the property and money of enemy governments, it did not intend to authorize the *restoration* of property erroneously seized as that of a foreign government, or to authorize the *payment* out of seized funds of debts of enemy governments established to be due and owing to American citizens prior to October 6, 1917.

In arguing that this Court should read into Section 9 an exception as to debts due American citizens by enemy governments, which finds no support in the language of the Act, or in the reasons underlying its enactment, Appellants' counsel is questioning not so much the *intention* of Congress as the *propriety* of its action.

In the language of this Court in *Oetjen v. Central Leather Company*, 246 U. S. 302,—“The conduct of the foreign relations of our Government is committed by the Constitution to the Executive and Legislative—the political—departments of the Government, and the propriety of what may be done in the exercise of this political power is not subject to judicial inquiry or decision.”

Notwithstanding the fact, however, that Congress, under its unlimited war power, has provided in plain language that American citizens might, upon the conditions set

forth in Section 9 of the Trading With the Enemy Act, require the payment of their just debts due and owing prior to October 6, 1917, from both enemy nationals and enemy governments, Appellants' counsel urges that this Court should, in effect, pass upon the propriety of the action of Congress under the guise of an attempt to determine its alleged intention. To sustain Appellant's contention would practically require this Court to say that Congress should not have provided for the payment of the debts of American citizens out of the property or money of enemy governments because of some fancied interference with the "sovereign rights" of such governments. It was said by this Court, in *Miller v. Robertson*, *supra*, that "the just purpose of the Section is not to be defeated by a narrow interpretation." Surely its purpose should not be defeated by the bodily insertion in the language of the Act of an exception in favor of enemy governments which Congress in its wisdom did not see fit to provide.

(c)

THESE SUITS ARE NOT IN ANY REAL SENSE SUITS AGAINST THE IMPERIAL GERMAN GOVERNMENT, AND DO NOT, WITHIN THE MEANING OF THE CASES CITED IN APPELLANTS' BRIEF, INVOLVE AN ADJUDICATION OF RIGHTS OR OBLIGATIONS OF A FOREIGN SOVEREIGN IN CONTRAVENTION OF ESTABLISHED PRINCIPLES OF INTERNATIONAL LAW.

As an abstract proposition, it is undoubtedly true that the Courts of the United States will not entertain jurisdiction of claims against foreign sovereigns, unless the sovereign consents. In the bill of complaint, it is affirmatively alleged that the Imperial German Government has admitted the indebtedness as set forth therein and has consented in writing to the payment of principal and interest of the

debts out of the funds of that Government heretofore seized by the Custodian and now in the possession of the Treasurer of the United States. (R. 2, case 425.) It is, therefore, idle to suggest that Germany might desire to repudiate its notes or object to have suit brought on them in the Courts of the United States.

Moreover, this suit is not in any real sense a suit against the German Government. It is a proceeding *in rem*. The Appellee is simply asking for the enforcement of its statutory right to be paid out of funds, formerly belonging to Germany, the legal title to which is now in the United States, the possession now in the Treasurer of the United States, and the final disposition of which is to be determined by Congress, subject to its prior disposal, as provided in Section 9 of the Trading with the Enemy Act, as amended.

It must be borne in mind at all times that there is under consideration an exercise of the war power. It is well established by many authorities that neither the German Government nor German Nationals have any rights in the property or money seized under the war power, except such as may be granted by Congress. The belligerent determines how far it will exercise the right of confiscation of enemy property. Where there is an act of Congress authorizing the confiscation or seizure of property, title passes from the enemy upon actual seizure. The person deprived of his property by virtue of such a seizure has no remedy in the Courts or elsewhere unless the belligerent has so provided. As a belligerent, the United States might enforce its power by confiscation. It might restore the seized property, in whole or in part, or upon such terms as it deemed expedient. All this it might do when and where and as it chose. It is a matter entirely within its sovereign discretion. Under the circumstances of this case, it will hardly be claimed that the Imperial Government has any *legal rights* with respect to its seized property, or

would have any standing in a Court of the United States to claim its restoration.

Rose v. Himely, 4 Cranch 272;
 Brown v. United States, 8 Cranch 111;
 United States v. Alexander, 2 Wall. 404;
 United States v. Padelford, 9 Wall. 531;
 Sprott v. United States, 20 Wall. 459;
 Haycraft v. United States, 22 Wall. 81;
 Lamar v. Browne, 92 U. S. 187;
 Young v. United States, 97 U. S. 39;
 Hijo Case, 194 U. S. 315;
 Herrera Case, 222 U. S. 558.

The Court below (R. p. 23) has applied the general principles established by the above authorities to the particular war time legislation now under consideration, saying:

"The seizure of an enemy's property is justified as an act of war. Two courses were open to the United States, in respect of property belonging to an enemy or ally of enemy, either to seize the property and conserve it for future disposition, or to confiscate it. *Miller v. United States*, 11 Wall. 268. In either case the action of the Government would be sustained. Indeed the property of any enemy or ally of enemy, seized under the Trading with the Enemy Act, so far as its return is concerned, is in a state of confiscation, since Congress specifically reserved to itself its future disposition. The property here in question, concededly enemy property, would be, but for Section 9, the property of the United States, subject to whatever disposition Congress might deem proper. The seizure of the funds in question divested the German Government of all title or interest therein, and their subsequent disposition is a matter with which it is not concerned. *Munich Reinsurance Co. v. First Reinsurance Company of Hartford*, 300 Fed. 345."

Having in mind, therefore, that the German Government has no present rights in the property in controversy and only such future rights as Congress might grant, we shall now consider the application here of the principle relied on by Appellants' counsel to deprive the courts of jurisdiction of these cases.

It is stated, on page 29 of Appellants' brief, that the principle having most bearing on the question of jurisdiction is—

“That a Court in the United States will not entertain jurisdiction of a case where in order for the Court to decide the case it would require the Court to pass upon the acts or obligations of a foreign sovereign, even though the foreign sovereign is not a party to the suit.”

We submit that the citations from decisions of this Court, relied upon by Appellants' counsel, do not sustain the contention. In none of the cases cited was there involved any question affecting the “obligations” of a foreign sovereign. In all of the cases the *acts* under consideration were committed by or on behalf of a foreign sovereign *in its own territory*. In none of them was it either affirmed or denied that the foreign sovereign was a necessary party to the suit. In none, was there an act of Congress to be construed, and last, but most important, in none was an act of Congress, passed in the exercise of the war power, urged to sustain the jurisdiction.

The principle that the cases cited apparently establish is that—

The Courts of the United States will not entertain jurisdiction of a case where in order for the Court to decide the case, it would require the Court to pass upon the acts of a foreign sovereign in its own territory.

With this principle we have no dispute. As will appear from an examination of the cases, neither the facts nor the doctrine of the decisions have any application to the facts of these cases.

In *Underhill v. Hernandez*, 168 U. S. 250, Underhill sued Hernandez in the U. S. District Court in New York for damages for alleged unlawful detention. There had been a revolution in *Venezuela*. Underhill had constructed a water works system in the City of Bolivar under a contract with the Government. Hernandez entered the City at the head of Revolutionary forces and took possession. Underhill then asked him for a passport. This was refused and he was detained. This Court affirmed the judgment of the Circuit Court of Appeals, holding that the acts of the defendant were acts of the Government of Venezuela and, as such, were not properly the subject of adjudication in the courts of another government. It is obvious that the decision was correct, and it is equally obvious that the case has no application here.

In *Oetjen v. Central Leather Co.*, 246 U. S. 297, there was involved the seizure and sale in *Mexico*, as a military contribution, of property at the time owned and in the possession of a Mexican citizen by a duly commissioned military commander of the legitimate government of Mexico. The plaintiff claimed his title to the goods replevied by virtue of a purchase in *Mexico*. No question was ever raised in the case to the effect that Mexico was a necessary party.

In affirming the judgment of the appellate court of New Jersey, this Court said:

"Applying these principles of law to the case at bar, we have a duly commissioned military commander of what must be accepted as the legitimate government of Mexico in the progress of a revolu-

tion and when conducting active independent operations, seizing and selling in Mexico, as a military contribution, the property in controversy at the time owned and in the possession of a citizen of Mexico, the assignor of the plaintiff in error. Plainly this was the action, in Mexico, of the legitimate Mexican Government when dealing with a Mexican citizen, and, as we have seen, for the soundest reasons, and upon repeated decisions of this Court, such action is not subject to reexamination and modification by the Courts of this Country."

It hardly needs elaborate argument to demonstrate that this case has no application to the facts under consideration and does not support the principle as stated by Appellants' counsel.

In *American Banana Company v. United Fruit Company*, 213 U. S. 347, the acts complained of were done *outside* the United States and in *Panama and Costa Rica* and the injuries, as said by this Court, "seem to have been the direct effect of the acts of the Costa Rican Government." There was a seizure by a *de facto* sovereign power and it was held that this could not be complained of elsewhere in the Courts.

In *Ricaud v. American Metal Company*, 246 U. S. 304, the acts complained of were done *in Mexico* and by a duly commissioned general of the legitimate government of Mexico. The Court declined to take jurisdiction, saying that—

"The Courts of one independent government will not sit in judgment on the validity of the acts of another, done within its own territory," and further that

"The act within its own boundaries of one sovereign state can not become the subject of reexamination and modification in the Courts of another."

It is respectfully submitted that in the consideration of this case the provisions of the Trading with the Enemy Act can not be laid aside, as suggested by Appellants' counsel, (Br. p. 31) and that when its provisions are considered, the cases above referred to are not authority against the Appellees on the question of jurisdiction.

In the effort to get away from the express jurisdiction conferred by Section 9 of the Trading with the Enemy Act, Appellant's counsel says:

"It would seem to be an elemental principle of law that the Congress of the United States cannot pass laws to bind a foreign sovereign." (Br. p. 32.)

And again,

"Assuming that Congress intended to include in Section 9 permission to bring suit upon claims against an enemy government, to that extent, Section 9 is unconstitutional." (Br. p. 34.)

No reference is made to any section of the Constitution which is violated by Section 9 of the Trading with the Enemy Act. By inference we conclude that its supposed unconstitutionality would rest upon the claim that it was an infringement upon the treaty making power vested in the President and Senate. It is not believed that the argument is seriously made or will be regarded by this Court. The German Government itself, which has not intervened to assert its rights, is the only party that would be in a position to take advantage of the alleged unconstitutionality. Not only has it failed to do this, but, by the terms of the Treaty of Peace with the United States it has expressly consented that all of its property in the hands of the Alien Property Custodian may be disposed of in accordance with the laws of the United States in effect on November 11, 1921, the date of the ratification of the Treaty. The terms and effect of the Treaty provisions are more fully considered under Point III, page 54 of this brief.

With respect to the intention of Congress, and at the risk of being tedious, it seems necessary again to say that Congress, by Section 9 of the Trading with the Enemy Act, has not attempted "to bind a foreign sovereign" or to authorize the bringing of "suit upon claims against an enemy government." In the constitutional exercise of the war power, Congress has authorized the seizure of the property of enemy governments and enemy nationals. By virtue of such seizure, the Imperial German Government lost all right, title and interest in and to the seized property. Title was vested in the United States, in a "state of confiscation," subject to the remedial provisions of Section 9. It was specifically provided by Section 12 of this Act that "after the end of the war any claim of an enemy or of an ally of an enemy to any money or other property received and held by the Alien Property Custodian or deposited in the United States Treasury, shall be settled as Congress shall direct."

Prior to the enactment of the Trading with the Enemy Act, the American debtors of the Imperial German Government, if they had sought to enforce their claims, would have been remitted to diplomatic channels. They would have had no right to sue the Imperial German Government in the Courts of the United States without its consent. They then had claims against the German Government which were purely political in character and the general principle with respect to claims against foreign sovereigns would have applied.

But after the purchase by American citizens, with the knowledge and consent of the State Department, of the Treasury Notes of the German Government, war was declared. Then came the passage of the Trading with the Enemy Act, the seizure of enemy owned property and the creation by Congress of a new remedy looking to the payment of debts due and owing American citizens. No distinction was made between enemy governments and enemy

nationals. This remedy was a proceeding *in rem* against the seized property itself and was in addition to the existing remedy which the American debtors had, namely to proceed through diplomatic channels to procure payment of their debts. While the evidence of the debt was an obligation of the German Government, the proceeding provided by the Trading with the Enemy Act for the payment of debts due American citizens out of seized enemy property was in no real sense a claim or suit against the Imperial German Government. Both of the Courts below have held that the German Government was not a necessary party defendant (R. 23.) and Appellants' counsel, apparently acquiescing in this judgment, has abandoned the 3rd and 4th assignments of error in case 425, which raised this question. (R. 34.)

In concluding this branch of the argument, it is submitted that it cannot be successfully maintained that Congress exceeded its constitutional war power in the passage of Section 9 of the Trading with the Enemy Act, or that the lawful exercise of this power as expressly set forth in the language of the Act, amounts to an attempt to deal with a "political question" or offends against recognized principles of international law.



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II.

THE APPELLEES HAVE ESTABLISHED THEIR DEBTS, AND THE RECORD CONTAINS COMPETENT AND CONCLUSIVE EVIDENCE ESTABLISHING THE FACT THAT THERE ARE NOW IN THE TREASURY OF THE UNITED STATES FUNDS WHICH, AT THE TIME OF SEIZURE BY THE ALIEN PROPERTY CUSTODIAN, BELONGED TO THE IMPERIAL GERMAN GOVERNMENT, AND OUT OF WHICH APPELLEES' DEBTS CAN BE LAWFULLY PAID.

The principle question of fact presented for consideration by the Courts below was as to the existence of funds seized from the Imperial German Government and held in the Treasury against which claims of the Appellees could be asserted. On that question of fact, both the Supreme Court of the District of Columbia and the Court of Appeals found against the Alien Property Custodian and the Treasurer of the United States. The well settled rule of this court, that where two Courts have reached the same conclusion upon a question of fact, it will be accepted here unless clearly erroneous, should therefore apply.

Second Russian Insurance Co. v. Miller, 267 U. S. —, (Dec. 6-1-25);

Grayson v. Harris, 267 U. S.—, (Dec. 3-2-25);

Norton v. Larney, 266 U. S.—, (Dec. 1-5-25);

U. S. v. State Investment Co., 264 U. S. 211;

Delaney v. U. S., 263 U. S. 590;

Yuma Co. Water Users Ass'n v. Schlecht, 262 U. S. 146;

American Bank and Trust Co. v. Fed. Res. Bk., 262 U. S. 645;

Brewer-Elliott Oil & Gas Co. v. U. S., 260 U. S. 86;

Bodkin v. Edwards, 255 U. S. 223;

Luckenbach v. McCahan Sugar Ref. Co., 248 U. S. 145;

National Bank of Athens v. Shackelford, 239 U. S. 82;

Wright-Blodgett Co. v. U. S., 236 U. S. 402.

The record shows that these cases came on to be heard upon the merits on June 14, 1924, on the bills of complaint, the answers, and evidence offered by the parties. Paragraph 8 of the bills of complaint make the following allegations:

"That the Alien Property Custodian now has in his possession or to his credit in the Treasury of the United States funds of the Imperial German Government, which were paid and delivered to him under the provisions of said Trading with the Enemy Act, as amended, and which are available by law, sufficient to pay the entire indebtedness, both principal and past due interest owing to complainant." (R. 2, Case 425).

The Appellants' answer to this paragraph alleges that they have no knowledge or information sufficient to form a belief with respect to the averments of paragraph numbered 8 of the bill of complaint, and therefore demand strict proof thereof. (R. 5, Case 425).

The allegations in these answers materially differ from the sworn answer filed by the same Appellants in the case of the Mechanics Securities Corporation, No. 423.

The Appellees, then offered testimony and evidence which showed that the Treasury Notes of the Imperial German Government, for the payment of which the suits were brought, were owing to and owned by the Appellees in these cases, prior to October 6, 1917.

The Appellees then offered in evidence all of the sworn answer filed by the same Appellants in the case of Mechanics Securities Corporation, (Case No. 423), except that portion of the answer setting up the affirmative defenses with respect to claims of the United States.

Paragraph 8 of the answer, as introduced into evidence, was as follows:

"Answering the averments of paragraph numbered 8 of the bill of complaint, these defendants

separately and severally say that the Alien Property Custodian, acting under and pursuant to the terms and provisions of the Trading with the Enemy Act, the amendments thereto, and the proclamations and Executive orders issued thereunder, after investigation, determined that the Imperial German Government was an enemy within the purview and meaning of the said act, the amendments thereto, and the proclamations and Executive orders issued thereunder, and that certain moneys were owing or belonging to, held for, by, on account of, and for the benefit of the said enemy. Thereupon, the Alien Property Custodian required the said moneys and other property to be conveyed, transferred, assigned, delivered, and/or paid to him, to be by him held, administered, and accounted for as provided by law. Thereafter the demands of the Alien Property Custodian were fulfilled and he received certain moneys, pursuant to the said demand, and paid the same to the Treasurer of the United States, in accordance with the provisions of the Trading with the Enemy Act. The amount of said moneys received as aforesaid is, at the present time, approximately Five Hundred Fifteen Thousand Five Hundred Seventy-One Dollars (\$515,571) and is held by the Alien Property Custodian in trust No. 555."

"Further answering said paragraph, these defendants separately and severally say that the Alien Property Custodian, acting under and pursuant to the terms and provisions of the Trading with the Enemy Act, the amendments thereto, and the proclamations and Executive orders issued thereunder, after investigation, determined that certain money was by Lee, Higginson & Company, of Boston, Massachusetts, in the approximate amount of Five Million Dollars (\$5,000,000) held for, by, on account of, and for the benefit of

an unknown enemy. Thereupon the Alien Property Custodian required the said money to be paid to him. Thereafter the demand of the Alien Property Custodian was fulfilled, and he received as aforesaid the said sum of Five Million Dollars (\$5,000,000), which he paid to the Treasurer of the United States, in accordance with the terms and provisions of the Trading with the Enemy Act and the said money was thereupon placed to the credit of unknown enemy No. 1, in trust No. 9322. Thereafter and to-wit, on or about the 8th day of March, 1923, the Alien Property Custodian determined that Two Million Two Hundred Thousand Dollars (\$2,200,000) of the Five Million Dollars (\$5,000,000) received as aforesaid was at the time of the receipt thereof by the Alien Property Custodian, held for, by, on account of, and for the benefit of the Imperial German Government. Thereupon the Alien Property Custodian directed the Treasurer of the United States to transfer from trust No. 9322 the sum of Two Million Two Hundred Thousand Dollars (\$2,200,000) and to place the same to the credit of the Imperial German Government, opening a special account designated 'Trust 555, Special'. Thereafter the Treasurer of the United States, pursuant to the said instructions, so transferred the said Two Million Two Hundred Thousand Dollars (\$2,200,000) to said trust.

"Further answering said paragraph these defendants say that they have no further knowledge, information, or belief with respect to the ownership of any of the said money received as aforesaid by the Alien Property Custodian, and this Court must determine out of what, if any, of the money held by the Alien Property Custodian, and/or the Treasurer of the United States, any claim which these defendants may establish must be paid." (R. p. 17, Case 425)

The Appellees then offered in evidence true copies of the record entries of the Treasury Department in Trust No. 9322 "Undisclosed Enemy No. 1", and Trust No. 555-Special, "Imperial German Government", showing the transfer of funds from Trust No. 9322 to Trust No. 555-Special, and a letter dated March 9, 1923, requesting the transfer of funds.

It appeared from these entries that on June 13, 1924, there was to the credit of The Imperial German Government in Trust 555-Special, the sum of Two Million Two Hundred Thousand Dollars (\$2,200,000). And in Trust No. 555, Imperial German Government, \$551,571.

The solemn admissions of the sworn answer of the Appellant, Miller, as Custodian, of the *facts found by him and his resulting determination of enemy ownership* in the Imperial German Government and of the Appellant, White, as Treasurer, *of the facts with respect to the record entries on the books of the Treasury in the name of the Imperial German Government*, all as set forth in paragraph 8 of the answer in the Mechanics Securities Corporation case are conclusive.

The facts ultimately pleaded were that the Imperial German Government had to its credit in the Treasury of the United States the sum of Two Million Seven Hundred and Fifteen Thousand, Five Hundred and Seventy-One Dollars (\$2,751,571.). They are definite positive statements of fact upon which the Court had an absolute right to rely. These admissions and evidence as to the credits standing in the name of the Imperial German Government upon the books of the Treasury constitute conclusive evidence in support of the allegations of paragraph 8 of the bills of complaint.

An analysis of the admissions in the answer in the Mechanics Securities case establishes the following facts, which constitute competent and conclusive evidence:

(a) That the Alien Property Custodian, acting under and pursuant to the terms and provisions of the Trading with the Enemy Act, as amended, and the Proclamations and Executive Orders issued thereunder, *after investigation*, determined—

1. That the Imperial German Government was an enemy within the meaning of the Trading with the Enemy Act.

2. That certain moneys were owing or belonging to, held for, by, on account of, and for the benefit of said enemy.

The above determination was made in the exercise of the authority granted to the President by Section 7 (c) of the Trading with the Enemy Act, as amended, which authority was delegated by the President to the Alien Property Custodian by Executive Orders of October 12, 1917, and December 3, 1918.

(b) That the Alien Property Custodian, acting for the President, required said moneys, so determined to belong to, or be held for, the benefit of the Imperial German Government, to be paid to him.

(c) That the demand of the Alien Property Custodian was fulfilled and that he received said moneys and paid the same to the Treasurer of the United States.

(d) That the amount of said moneys demanded and seized by him and paid to the Treasurer, and at the time of the entry of the final decrees, held by him for account of the Imperial German Government in Trust No. 555, was Five Hundred and Fifteen Thousand Five Hundred and Seventy-One Dollars (\$515,571.).

(e) That the Alien Property Custodian, acting for the President under the terms and provisions of the Trading with the Enemy Act and Executive Orders hereinbefore referred to, after investigation, determined—

1. That certain money, approximately Five Million Dollars (\$5,000,000) was held by Lee, Higginson & Co., of Boston, Massachusetts, for, by, on account of, and for the benefit of, an unknown enemy."

2. That said sum of money should be paid to him as Custodian.

(f) That his demand was fulfilled, that he received the said sum of Five Million Dollars (\$5,000,000.) and paid it to the Treasurer who thereupon placed it to the credit of unknown enemy No. 1, in Trust No. 9322.

(g) That thereafter, on the 8th day of March, 1923, the Alien Property Custodian, acting for the President under the powers granted by Section 7 (c) of the Trading with the Enemy Act, as amended, determined that Two Million Two Hundred Thousand Dollars (\$2,200,000.) of the Five Million Dollars (\$5,000,000.), demanded and seized by him as belonging to an unknown enemy, *was at the time of the receipt thereof*, held for, by, on account of, and for the benefit of the Imperial German Government".

It will be observed that this was the first specific determination of ownership with respect to this fund. In other words, the Custodian, acting for the President, first seized the fund as that of an unknown enemy and subsequently identified the fund as belonging to the Imperial German Government. Although three times afforded the opportunity in open Court, the Custodian, Miller, neither took the stand nor offered any evidence to show that his designation of ownership was not correct.

(h) That thereafter, on the 9th day of March, 1923, the Alien Property Custodian directed the Treasurer to transfer from Trust No. 9322 the sum of Two Million Two Hundred Thousand Dollars (\$2,200,000.) and to place the same to the credit of the Imperial German Government in a special account to be designated "Trust 555, Special".

(i) That thereafter the Treasurer, pursuant to the instructions of the Alien Property Custodian, did transfer the sum of Two Million Two Hundred Thousand Dollars (\$2,200,000.) and placed it to the credit of the Imperial German Government and that, at the time of the entry of the final decrees herein, said sum of money was held in said special account for the credit of the Imperial German Government.

After reviewing the above testimony, admissions and documentary evidence, the Court below said:

"This was unquestionably competent evidence and sufficient in character to establish a *prima facie* case as to the existence of funds seized from the Imperial German Government and held in the Treasury against which the claims of Plaintiffs could be asserted. As was said in *Pope v. Allis*, 115 U. S. 363, 370: 'When a bill or answer in equity or a pleading in an action at law is sworn to by the party, it is competent evidence against him in another suit as a solemn admission by him of the truth of the facts stated. *Studdy v. Sanders*, 2 D. & R. 347; *DeWhelpdale v. Milburn*, 5 Price 485; *Central Bridge v. Lowell*, 15 Gray 106, *Bliss v. Nichols*, 12 Allen 443; *Elliott v. Hayden*, 104 Mass. 180; *Cook v. Barr*, 44 N. Y. 156; *Taylor on Evidence*, Sec. 1753, 7th ed., *Greenleaf Evidence*, Sec. 552, 555.' The truth of these statements is not controverted."

The only attempt made by the Appellants to rebut this testimony was the offer of a copy of a letter, dated March 14, 1924, from the Alien Property Custodian to the Secretary of the Treasury, attempting to withdraw the instructions sent to the Secretary of the Treasury, under date of March 10, 1923, directing the transfer of the \$2,200,000. from Trust No. 9322 to Trust No. 555-Special, "Imperial German Government".

This letter from the Custodian to the Secretary of the Treasury, dated March 14, 1924, was clearly inadmissible for the following reasons:

- (a) It was a purely self-serving statement of a party to the litigation.
- (b) The letter was written after these suits were filed and the law has never tolerated an alteration of the records by a party to make evidence in his favor after suit has been filed.
- (c) The letter could not change the status of funds after suit was filed because these suits are suits *in rem*, and, as provided by Section 9 of the Trading with the Enemy Act, the funds were impounded as those formerly belonging to the Imperial German Government and definitely set aside to abide the results of these suits.

Assuming for the sake of argument that the letter was admissible, it contains nothing to controvert or deny the evidence offered by the Appellees, or any fact contained in the sworn answer. It admits that the two million two hundred thousand dollar fund was credited to the Imperial German Government, but it does not state that the Alien Property Custodian has made any further investigation of and redetermination of ownership. It casts no doubt upon the determination as made by the President, acting through the Alien Property Custodian on March 8, 1923. The letter is merely an abortive attempt, after these suits were filed and after a final decree had been entered in the Supreme Court of the District of Columbia in the Mechanics Securities Corporation case, to withdraw instructions to the Secretary of the Treasury, which instructions had already been carried out by the Treasurer of the United States before these suits were filed.

Appellants did not plead, either in the answer or in the suggestions of the Attorney General, that the Alien Property Custodian had discovered any new facts or received any new information, or that he had made any redetermination and there was not a scintilla of proof offered in support of the letter of March 14, 1924. The Custodian did not take the stand and did not offer any evidence which would cast doubt upon his determination of enemy ownership in the Imperial German Government.

In sustaining Appellees' contention with respect to the inadmissibility of the letter of March 14, 1924, the Court below said:

"The transfer of the \$2,200,000. to Trust No. 555-Special, 'Imperial German Government', of March 8, 1923, was a determination by the Custodian of the enemy ownership of the fund. It amounted to a finding after investigation that the fund should be held 'for, by, on account of, or on behalf of, or for the benefit of' the Imperial German Government. There was no change of the ownership by the Custodian when the fund was transferred on March 8, 1923, since there is nothing in the record to indicate that the ownership up to that date had been specifically determined. The Custodian, then exercising the power imposed upon the President, determined specifically the enemy ownership of this fund. In further support of the lack of evidential effect of the letter of March 14, 1924, it contains no reasons, nor is it supported by any evidence, which challenges or affects the correctness of the former determination of enemy ownership.

"It was not within the power of the Custodian to defeat the present actions during their pendency in the Court below by his attempted transfer of the fund back to 'unknown enemy Trust No. 9322'. In case of suit the statute itself provides for the retention of the money or property in the custody

of the Alien Property Custodian or the Treasurer of the United States to await the final judgment or decree. It is clear, therefore, that the Custodian having determined the question of enemy ownership, and having designated the fund in the Treasury to which it belonged, could not, without at least good and sufficient reasons, by the mere transfer of this fund so change the status of the property in litigation as to destroy claimant's cause of action while suit was pending."

Notwithstanding the judgment of the two lower Courts to the effect that the facts pleaded in the Appellants' answer in the Mechanics Securities Corporation case and the admissions of the Custodian and the Treasurer and the evidence of record entries upon the books of the Treasury, were "unquestionably competent evidence and sufficient in character to establish a *prima facie* case as to the existence of funds seized from the Imperial German Government and held in the Treasury against which the claims of plaintiffs could be asserted". (R. 30, Case 425) Appellant's counsel have devoted a considerable portion of their brief to an ingenious argument with respect to the statutory powers of the Custodian and the effect of a determination of ownership by him. While we insist that the question for this Court's determination is one of evidence and the weight of evidence, and not as to the powers of the Custodian, we will now consider the Appellant's argument.

The first proposition urged by Appellants' counsel is that the answer in the Mechanics Securities Corporation case, introduced as evidence, "simply pleads the facts relative to the letter sent by the Alien Property Custodian to the Secretary of the Treasury on March 9, 1923"; (Br. p. 45); that this *letter* had "no legal effect whatsoever and utterly fails as evidence to show the ownership at the time of seizure"; (Br. p. 45); and that this is true be-

cause after seizure and deposit in the United States Treasury, the Custodian had no duty or authority with respect to money. (Br. 47)

It is, however, admitted in the beginning by Appellants' counsel that if the letter of March 9, 1923, "is any evidence whatsoever as to that ownership, then it is, of course true that any burden upon the plaintiffs in the lower Court to prove the ownership of the funds at the time of seizure has been borne". (Br. p. 45)

It will be observed that Appellant's argument is directed solely and entirely at the evidentiary effect of the letter of March 9, 1923, and there is serious error in stating that the answer "simply pleads the facts relative to the letter" of March 9, 1923. For the purpose of their argument, they ignore the sworn admissions of the Custodian and the Treasurer in the answer in the Mechanics Securities Corporation case which are independent of, and in addition to, the facts set forth in the letter of March 9, 1923. For example, they overlook the admission in the Custodian's answer of the *fact* that on March 18, 1923, and prior to the writing of the letter of March 9, 1923, the Custodian, acting for the President under the powers granted by Section 7(c) of the Trading with the Enemy Act, as amended, determined that \$2,200,000. of the \$5,000,000., demanded and seized by him as belonging to an unknown enemy, was, *at the time of the receipt thereof*, "held for, by, on account of, and for the benefit of the Imperial German Government". The *fact* of this determination by the Custodian of specific enemy ownership on March 8, 1923; the *fact* of the transfer by the Secretary of the Treasury of funds from one account to another; and the *fact* that at the time of the entry of the final decree in the Supreme Court of the District of Columbia there were, in the Treasury of the United States, funds tagged with the name of the Imperial German Government amounting to \$2,751,571., were all in evidence in addition to the letter of March 9, 1923, and the facts contained therein. This

letter says nothing about the fact of the Custodian's determination on March 8, 1923, and simply expresses the desire that the sum of \$2,200,000, be transferred on the records of the Treasury Department from Trust 9322 to the account of the Imperial German Government—Trust No. 555-Special. Pursuant to this request, the answer contained the admission that the Treasurer did so transfer the said \$2,200,000. to the account of the Imperial German Government. Therefore, it seems to us that, regardless of the letters of March 9, 1923, the record contains unquestionably competent evidence which is sufficient to establish a *prima facie* case. This was the view of the Court below, as appears from that part of its opinion summarizing the evidence and saying:

"The answer in that case, made under oath by the defendants, set forth that the Custodian had turned over to the Treasurer \$515,571., which was deposited in Trust No. 555-Special, 'Imperial German Government'; and that there had been transferred to the same trust \$2,200,000. from Trust No. 9322, 'Unknown Enemy No. 1,' making a total credit to Trust No. 555-Special, 'Imperial German Government,' of \$2,715,571. The status of these respective trusts is also shown by true copies of record entries from the Treasury Department, which were put in evidence." (R. 30. case 425).

The Court below, without mentioning or referring to the letter of March 9, 1923, says that the above was "unquestionably competent evidence and sufficient in character to establish a *prima facie* case."

It will be recalled that Appellants' counsel concedes that the presence in the record of "any evidence whatsoever" as to ownership is sufficient to carry the burden upon the Appellees of establishing a *prima facie* case. In this connection, it will not be overlooked that although three times afforded the opportunity in open court, neither the Cus-

todian nor the Treasurer took the stand, nor offered any evidence to cast doubt upon the correctness of the determination of ownership, or to rebut the testimony as to ownership relied upon by the Appellees.

Appellants' entire argument, with respect to the power, of the Custodian over money, seems to us to rest upon a fundamental misconception. It is not to be thought that Congress either had the right, or could have intended to give the Custodian any power to "affect", and certainly not to "change" ownership of property or of money. However, it did give him the power, for the purposes of the Act, to determine, in his judgment, the facts as to ownership,—to say, after investigation, to whom he believed property or money belonged, and then the further power was given him to act on that determination. It makes no difference to Appellees in this case what the powers of the Custodian were with respect to money after its seizure. What they are concerned with is the consideration by the Court of the *facts in* evidence as a basis for the judgment authorized by Section 9 of the Trading with the Enemy Act. Neither the existence of the letter of March 9, 1923, requesting the transfer of funds then held by the Treasurer, nor its use as evidence, is essential or necessary to maintain Appellees' contention. If the instructions in that letter had not been complied with, it would not have made any difference, and, therefore, it certainly cannot make any difference whether the Custodian had, or did not have, the power to give such instructions.

It is submitted that, in the last analysis, regardless of the power, or lack of power, of the Custodian over money, *the competency* of the letter of March 9, 1923, as evidence cannot be affected. The Appellants' argument goes to its weight, not to its competency. When read in connection with the independent admissions in the answer of the Custodian and the Treasurer, and the evidence as to record entries in the Treasury, we are confident that the ingenious argument of Appellants' counsel will not be

regarded as sufficient to overthrow the judgment of the two lower Courts.

As this Court has said, in *Delaney v. United States*, 263 U. S., 586, something more than ingenious criticism is necessary to overthrow a judgment in this Court on the ground that it is not supported by the testimony where the finding has been approved by two Courts. Mr. Justice McKenna, in that case, said:

"Petitioner attacks the judgment as not being supported by the testimony, a great deal of which is detailed. The immediate reply is that the probative sufficiency of the testimony has the support of the district court (in which is included the verdict of the jury) and of the Circuit Court of Appeals. It would take something more than ingenious criticism to bring even into question that concurrence or to detract from its assuring strength,—something more than this record presents."

In addition to attacking the power of the Custodian over money, Appellants' counsel argue that "a determination by the Alien Property Custodian, as to any money deposited in the Treasury of the United States pursuant to the Act, is of no greater effect than a determination by a private citizen, and has no evidentiary value with respect to the ownership of the money at the time of seizure." (Br. p. 49). And it is further said that "the determination by the Custodian of ownership is merely made for the purpose of securing possession of the property through the Custodian." (Br. p. 54).

We emphatically deny this conclusion with respect to the effect of a determination and, on the contrary, assert that a determination of specific enemy ownership by the Alien Property Custodian, acting for the President under Section 7(c) of the Trading with the Enemy Act, as

amended, is final against all the world, unless, in a proceeding brought in a proper tribunal by another claiming to be the owner, it should appear, by competent testimony, that the real owner is some one else. In this case, no person has appeared and there is no testimony proving, or tending to prove, that there is another owner.

The Trading with the Enemy Act must be read as a whole. The three leading cases in this Court, which have construed the Act, are:

- Central Union Trust Co. v. Garvan, 254 U. S., 554;
- Stoehr v. Wallace, 255 U. S., 239;
- Commercial Trust Co. v. Miller, 262 U. S., 51.

Justice McKenna, in the Commercial Trust Company case, referred to the two earlier cases, and said that the "determining generalities" of the Act, as theretofore decided, were "that the President's power may, under Section 5 of the Act, be delegated to, and be exercised by, the Custodian, and that the determination of the Custodian is conclusive, whether right or wrong. And it may be exercised by forcible seizure of the property or by suit, and, if by suit, the suit is purely possessory and must be yielded to; the right of any claimant being postponed to subsequent assertion. And it was decided that the Custodian acquires by suit 'nothing but the preliminary custody, such as would have been gained by seizure. It attaches the property to make sure that it is forthcoming if finally condemned, and does no more.' In other words, and in comprehensive description, the Act may be denominated an exercise of governmental power in the emergency of war, and its procedure is accommodated to, and made adequate to, its purpose, but securing, as well, the assertion of opposing or counter-vailing rights 'by a suit in equity, unembarrassed by the President's executive determination':

and, if the claimant 'prevails', the property 'is to be forthwith returned to him.' " (Italics added).

The Court further said, "under the Act, it is to be remembered, the *Custodian succeeds to all the rights in the property to which the enemy is entitled as completely as if by conveyance, transfer or assignment.*" . . (Italics added)

With respect to the act of "determination" the Court says that the only condition necessary to support a suit to enforce a demand is "the determination by the Alien Property Custodian that it was enemy property. It was recognized that there is implication in the Act that mistakes may be made, but it, the Act, assumes 'that the transfer will take place, whether right or wrong.' In other words, it is the view of the opinions that the Act provides for an exercise of governmental power, but also provides, as we have said, redress for mistakes in its exercise by the claimant of the property filing a claim under Section 9, which, if not yielded to, may be enforced by suit."

The determination of enemy ownership by the Alien Property Custodian is therefore an "exercise of governmental power." Such a determination, after investigation, has all the force and effect of an executive order of the President. No one other than a person filing claims under Section 9, and certainly no enemy or ally of enemy can dispute his determination. Subject to the will of Congress, and subject to the rights of claimants under Section 9, the Custodian holds absolute title to the money and property seized by him. As Judge McKenna says, "the Custodian succeeds to all the rights in the property to which the enemy is entitled as completely as if by conveyance, transfer, or assignment."

Section 7(c) of the Trading with the Enemy Act, as amended by the Act of November 4, 1918, in so far as it provides for seizure of property or money, is as follows:

"If the President shall so require, any money or other property, including (but not thereby limiting the generality of the above) patents, copyrights, applications therefor, and rights to apply for the same, trademarks, choses in action, and rights and claims of every character and description owing or belonging to or held for, by, ~~on~~ account of, or on behalf of, or for the benefit of, an enemy or ally of enemy not holding a license granted by the President hereunder, *which the President after investigation shall determine is so owing or so belongs or is so held*, shall be conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian, or the same may be seized by the Alien Property Custodian; and all property thus acquired shall be held, administered, and disposed of as elsewhere provided in this Act. (Italics ours).

Section 9(a), as amended, in so far as it provides for the restoration of property or money by the President, is as follows:

"The President, if application is made therefor by the claimant, may order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States, or of the interest therein to *which the President shall determine* said claimant is entitled." (Italics added).

It will be noted that Section 7(c), as amended, authorizes the seizure of enemy property "which the President, after investigation, shall *determine* is so owing or is so held." Section 9(a) authorizes the restoration of property or payment of money upon application to the Presi-

dent "to which the President shall *determine* said claimant is entitled."

By Executive Orders of October 12, 1917, and February 26, 1918, the President delegated his power under Section 7(c), as amended, to the Alien Property Custodian. Under Executive Order of October 12, 1917, the President delegated his power under Section 9(a), as amended, to the Attorney General. In both cases, what the President delegated was all of his power to determine the fact of ownership.

The determination by the President, through the Attorney General, of the interest of a claimant under Section 9(a), is an act of no greater formality than his determination of enemy ownership through the Alien Property Custodian under Section 7(c), and yet his power to order the payment of debts without proof of enemy ownership by any of the claimants has never been questioned.

Congress surely intended the Court to have as great power as the President in determining the interest or ownership of the Claimant, and to permit the determination of ownership by the President, acting through the Alien Property Custodian, to be considered as sufficient evidence by the Court, in a suit brought to establish the Claimant's debt. In other words, if the President's determination is under the Statute final and conclusive evidence of the fact of ownership, as a basis for Executive allowance, the court has the right to treat it as conclusive evidence of ownership upon which to base a decree ordering the payment of a debt which has been established by the Claimant. *The determination of the President, as well as the determination of the Court, is binding on all enemies, or allies of enemies, whose money or property has been seized, regardless of the fact of ultimate ownership as between enemies.*

Practical considerations support this view. The Act was

passed in the exercise of war power and one of its principal purposes was to prevent all intercourse between Germany and the United States and all communication or trading was specifically forbidden, except under license. The information as to ownership of enemy property in this Country could best be ascertained through the office of the Custodian whose duty it was to search out and seize such property. It would be almost impossible to procure evidence as to non-resident enemies which was not available to, or in the possession of, the Custodian. To require the claimant in a debt case to furnish evidence of enemy ownership other than the determination of the President after careful investigation by all the agencies of the Government at the disposal of the President, acting through the Alien Property Custodian, would defeat the purpose of the Statute. Certainly it will not be contended that a private citizen with the meagre facilities at his disposal could furnish more convincing proof of enemy ownership than his Government was able to obtain with the vast powers of investigation at its disposal. In this case, who can now or hereafter be heard to deny the correctness of the President's determination of ownership in the German Government?

In the cases cited in the Appellants' brief, the effect of a determination by the President was not the issue. What they hold is that *after* determination of enemy ownership by the President, suits to enforce his demands are merely *possessory actions* to procure for him immediate possession, and that the rights of non-enemy claimants to money or property wrongfully seized, will not be determined in such suits, but by notice of claim and/or suit in an independent proceeding under Section 9. Moreover, if these cases hold anything as to the effect of a determination, they sustain the proposition upon which we rely, to-wit: that the determination of enemy ownership by the

President, acting through the Alien Property Custodian, operates to vest absolute title in the Custodian, and is final as against every one, except Claimants under Section 9.

Central Union Trust Company v. Garvan, *supra*;
Stoehr v. Wallace, *supra*;

Munich Reinsurance Co. v. First Reinsurance Co.
etc., 300 Fed., 345;

Siggfehr v. Miller, et al, 285 Fed 953;

Garvan v. Bonds, 265 Fed. 477.

Substantially the same argument was made by Appellant's at great length in the Court below, and was disposed of in the opinion of the Court of Appeals, as follows:

"The transfer of the \$2,200,000. to Trust No. 555-Special, 'Imperial German Government', on March 8, 1923, was a determination by the Custodian of the enemy ownership of the fund. It amounted to a finding after investigation, that the fund should be held 'for, by, on account of, or on behalf of, or for the benefit of' the Imperial German Government. There was no change of the ownership by the Custodian when the fund was transferred on March 8, 1923, since there is nothing in the record to indicate that the ownership up to that date had been specifically determined. The Custodian, then exercising the power imposed upon the President, determined specifically the enemy ownership of this fund."

Not only is it true that there is nothing in the record to indicate that the ownership up to March 8, 1923, had been specifically determined, but it is also true that it is admitted in the answer of the Custodian that his determination of ownership on March 8, 1923, was with respect to "the time of the receipt thereof" by the Alien Property Custodian.

We therefore say that regardless of what may be the view of the Court with respect to the technical legal effect of a determination of ownership, the *fact* of such a determination of specific enemy ownership as of the time of seizure, after investigation through all of the agencies of the government at the disposal of the President, is entitled to substantial weight as evidence, especially in the absence of either evidence or argument which challenges or affects the correctness of the determination. (R. 31, Case 425.)

As a corollary to the main argument with respect to the effect of the determination, Appellants' counsel more or less feebly urge that after the Custodian in this case had determined "that the money belonged to an undisclosed enemy", he could not thereafter "change his determination and say that it belongs to a specific enemy or another enemy." (Br. p. 59.)

We think this contention is sufficiently answered in the opinion of the court below where it was said that "there was no change of the ownership by the Custodian when the fund was transferred on March 8, 1923, since there is nothing in the record to indicate that the ownership up to that date had been specifically determined."

It cannot be seriously contended that the Custodian, acting for the President, cannot at least determine *once* the *specific enemy ownership* of property or money seized by him, or that Congress ever intended to limit the Custodian to the seizure of money belonging to unknown enemies without giving him the power at the same time to express his subsequent judgment and determine the specific ownership as of the time of seizure upon the basis of later or additional evidence.

In concluding Appellants' argument on this branch of the case, it is said that "once in his possession, title to property could be adjudicated only by the President, the

Courts, or in a manner to be provided for by Congress." (Br. p. 61.)

Assuming that this is a correct statement of the law, Appellees have been endeavoring for several years to have the courts finally adjudicate the title to the funds in question and to make them available for the payment of their debts. *We have not sought to have the question of title adjudicated by the Alien Property Custodian.* We have, however, maintained, and still insist, that the *facts* with respect to the Custodian's determination of specific enemy ownership, whether it be for the purpose of seizure, or for the purpose of administration, or for the purpose of advice to the Secretary of the Treasury, as solemnly admitted by him in his sworn answer in the Mechanics Securities Corporation case, constitute *competent, and in the absence of rebuttal, conclusive evidence* upon which the Courts may adjudicate such questions of title and ownership as are involved in these cases.

Our contention has been sustained not only by the two Courts from which these appeals are being prosecuted, but also by the United States District Court for the Eastern District of Missouri in cases involving similar questions and which are now pending in this Court on petitions for writs of *certiorari*. We therefore say again, in the language of this Court in the Delaney case, *supra*, that the probative sufficiency of the testimony in this case has the support and approval of three Courts of competent jurisdiction, and that something more than ingenious argument is necessary to bring even into question the concurring judgments of such Courts.

III.

THE RIGHTS OF THE UNITED STATES TO THE FUNDS FORMERLY BELONGING TO THE IMPERIAL GERMAN GOVERNMENT, AND NOW IN THE HANDS OF THE TREASURER FOR ACCOUNT OF SUCH GOVERNMENT, ARE SUBJECT TO THE PROVISIONS OF THE TRADING WITH THE ENEMY ACT, AS AMENDED, AND THAT ACT DOES NOT AUTHORIZE THE UNITED STATES TO SET UP ITS CLAIMS AGAINST GERMANY AS A DEFENSE TO THIS SUIT.

The alleged rights of the United States, with respect to the funds in controversy in these cases, were raised by suggestions filed by the Attorney General. Motions to strike out the suggestions were filed upon grounds, among others, that they put in issue matters existing between the German Government and the United States, neither of which were proper parties to these suits; that the United States was not authorized to file notice of claim under Section 9 of the Trading with the Enemy Act; that the Supreme Court of the District of Columbia was without jurisdiction to determine the rights of the United States in respect to the claims set up against the Imperial German Government, and that it appeared on the face of the suggestions that the claims asserted had been settled between the United States and Germany by treaty, and were, therefore, not matters within the jurisdiction of the Court, but were matters for diplomatic intercourse and settlement between the respective sovereigns. (R. 16, Case 424.)

The suggestions were considered by the Supreme Court of the District of Columbia, "carefully and with the deliberation to which such a suggestion is entitled" and the motions to strike out were sustained, the Court being of the opinion "that the facts therein alleged" were "imma-

terial and irrelevant to this cause, and that the said suggestion" was "insufficient in law to maintain a claim on behalf of the United States." (R. 17, Case 424.)

In dismissing the appeals of the United States from the orders striking out the suggestions, the Court below said:

"No petition was filed in the Court below by the United States for right to intervene, nor can the suggestion filed be treated as a petition for intervention. The order striking the suggestion from the files was a mere interlocutory order, which could not furnish the basis for a separate appeal. The attempt here made by the United States is to conduct separate appeals, and thereby avoid any connection with the original cases.

"The lack of necessity for intervention by the United States is apparent. The Alien Property Custodian and the Treasurer are made Defendants by the express terms of the Act, and as such have power to defend the interests of the United States. This they have attempted to do in the original cases by motion to dismiss for lack of proper parties. In support of this motion they could have advanced all the reasons for making the United States a party defendant, that have been suggested in the paper sought to be filed in the Court below." (R. 31, Case 425.)

While conceding that in some cases the rights of the United States may be properly raised by suggestion, we cannot agree with Appellants' counsel that "in any proceedings pending in any Court the United States may come in by way of suggestion and advise the Court as to its rights." (Br. 63.) While it is possible that this might be true for the purpose of advising the Court, it is obvious that a suggestion cannot be used to take the place of a petition for intervention or a motion to dismiss, or to relieve the United States from its duty to assert its claims directly

where it either desires or is required by statute to be made a party to an action. Upon the whole, the action of the Court below in dismissing the separate appeals of the United States from the interlocutory orders striking out the suggestions seems so clearly right as not to require further argument.

However, considering the claims set forth in the suggestions, the rights of the United States are urged substantially upon two grounds,—

1. That on "general principle" the United States is entitled to assert its rights and have them passed upon in these suits;

2. That the United States is a "person" within the meaning of Section 9 of the Trading with the Enemy Act, and is therefore a proper claimant under that Section.

(1)

On "General Principle" the United States is Not Entitled to Assert Its Rights and Have Them Passed Upon in These Suits.

We do not think the Court will be impressed by the argument of Appellants that the United States on "general principle" is entitled to assert its claim against the funds formerly belonging to the German Government and now in the hands of the Treasurer of the United States. The claims of the United States against Germany, in the absence of a specific statute by Congress, are matters to be exclusively handled through diplomatic channels, and under our system of government, the Secretary of State is alone charged with the duty of representing the United States.

In asserting that the United States should be allowed on "general principle" to have its claims against Germany adjudicated in this proceeding, Appellants' are really ask-

ing this Court to usurp the treaty making powers of our Government and apply the relatively small sum seized by the Alien Property Custodian upon some one of the many claims of our Government against Germany, notwithstanding the fact that by diplomatic agreement between the United States and Germany, the Mixed Claims Commission was established, which tribunal, after investigation, has made awards in favor of the United States upon the very same claims which are set up in the suggestions.

Furthermore, the Appellants have no right to ask the Court in this case to pass upon the debit and credit relations between our Government and the German Government. They have no right to ask the Court to find and determine in this case the amount that may, as a result of the application of the principles of subrogation, be due the United States by Germany, nor to enforce the collection in this suit of any part of such indebtedness.

And, unless this Court is prepared to say that, in these proceedings, all the details of the debit and credit relations involved in the settlement of loss and damage claims between the United States and Germany, heretofore exclusively reserved for treatment and adjustment through diplomatic agencies should be considered and adjudicated, the allowance of the claims of the United States herein and the appropriation of the funds, or any part of the funds, belonging to the Imperial German Government, would amount to nothing less than judicial confiscation. And this, too, in the face of the fact that Congress, which had the undisputed power, declined to confiscate the funds in question to satisfy the claims of the United States and waived its rights to such funds by enacting Section 9 of the Trading with the Enemy Act.

The cases cited by Appellants' counsel to the effect that the United States is not bound by any provisions of a statute with respect to its claims, assuming that they are

correctly decided, are totally inapplicable here. The Dollar Savings Bank case, for example, (86 U. S. 227) holds nothing more than that the United States is not prohibited from adopting any remedies for the recovery of a debt due it which were known to the laws of Pennsylvania, in addition to the remedies already provided by the U. S. Internal Revenue laws.

In the present case, there is no common law remedy, there is no remedy under State Statutes. The right of the United States to recover, if it has any such right, must depend absolutely and solely upon the provisions of the Trading with the Enemy Act. Congress had said that the remedy provided by that Act shall be exclusive.

(2)

The United States is Not a "Person" Entitled to File a Claim Under Section 9 of the Trading With the Enemy Act.

Section 7(c), as amended, provides that "the sole relief and remedy of any person having any claim to any money or other property heretofore conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian, or required so to be, or seized by him, shall be that provided by the terms of this Act."

This Court has held in several cases that any person having any claim against property or funds in the hands of the Custodian must pursue his rights under Section 9 of the Trading with the Enemy Act, as amended, which is the only Section of the Act which provides for the recovery of property or the payment of debts.

Central Union Trust Co. v. Garvan, 254 U. S. 554;

Commercial Trust Co. v. Miller, 262 U. S. 51;

Ahrenfeldt v. Miller, 262 U. S. 60;

U. S. Trust Co. v. Miller, 262 U. S. 58.

Unless, therefore, it can be fairly and reasonably said that Congress intended the United States to be a claimant under the Trading with the Enemy Act, it follows that it can assert no claim to the funds belonging to the Imperial German Government and now in the hands of the Treasurer of the United States.

Appellants' counsel again ingeniously argue that because the United States has been defined to be a "body politic" in some early court decisions, it is therefore a "person" as defined in Section 2 of the Trading with the Enemy Act and therefore a "person" entitled to file a claim under Section 9 of the Act.

While it may be conceded that the United States is a "body politic" in a limited sense, it is certainly true that only by the most artificial process of reasoning can the conclusion be reached that Congress intended the United States to be a "person" within the meaning of Section 9 of the Act.

Having the absolute right to confiscate the property of the Imperial German Government and also the property of Nationals of that Government, if such action had been taken as an act of war and without a statute regulating the taking and subsequent disposition, the property would, of course, have belonged absolutely to the United States to be used and disposed of as it saw fit.

When Congress, however, passed the Trading with the Enemy Act, it waived its sovereign privilege of taking this enemy property absolutely. It chose to create the office of Alien Property Custodian, to provide for the determination of enemy ownership by the President, and for the restoration of property erroneously seized and for the payment of debts due American citizens, and for numerous other matters covered by the Trading with the Enemy Act. Surely Congress could not have contemplated that the United States should be a "person" within the meaning of this Act who could set up a claim against the same

property or money which Congress had the absolute right to take for itself, when it had declined to exercise this right and waived its sovereignty in favor of citizens or neutrals having debts due them by enemies whose property had been seized.

This was the view of the Court below which said, "nor do we think that the United States is a 'person' as mentioned in Section 9 of the Act, or such a party as can take advantage of the provisions thereof" "The United States has relinquished any interest it may have had in the fund in favor of creditors of the enemy, in this instance the German Government." (*R. 19*).

After having declined to take the property of the German Government for itself as it had the power to do, to say that the United States can or should file claims against German Government property in the same manner as individual creditors, makes the entire Act meaningless. Had our Government intended to confiscate this fund, it would never have enacted that part of Section 9 of the Trading with the Enemy Act relevant to this proceeding, because the effect of this Section is to give to individual creditors, complying with the requirements of Section 9, rights against the funds belonging to Germany prior to any rights of the United States.

In the case of the Northwestern Trust Company, a similar suit filed in the United States District Court for the Eastern District of Missouri, Judge Faris also correctly construed the Act, saying:

"By Section 9 of the Act, it was enacted, however, that the money accruing from such confiscations might be used in paying debts due by the Imperial German Government to loyal citizens of the United States. It is then, obviously, only upon the theory that the United States is a person, within the meaning of Section 9 of the Act, that the

United States could become a claimant'. I think this is so obviously erroneous, as I have already briefly attempted to point out, that the matter needs no further exposition."

"Again this fund was, absent Section 9, the property of the United States for any use to which the United States wished it to be devoted. The very fact that this section was enacted, proves that the word 'person' in the Act does not include the United States; . . .

"The case presented is simply one wherein the United States seized and confiscated the money and property of an enemy and of the nationals of that enemy, as it had the right to do. (*Miller v. U. S.*, *supra*), and thereupon, instead of devoting such confiscated property to the use of the United States, as it likewise had the right and power to do, nevertheless, saw fit to pass a Statute by the terms whereof such confiscated property was made a fund to which creditors of the Imperial German Government, being loyal citizens of the United States, could resort for the payment of money honestly due such citizens."

Reverting to the Government's contention that Section 9 of the Trading with the Enemy Act, if construed to apply to the payment of debts due American citizens out of property of the Imperial German Government, would be unconstitutional, (Br. p. 34) the Court's attention is directed to the provisions of the Treaty of Peace between the United States and Germany, which appear to conclusively dispose of this question, as well as of the claims of the United States as made herein. The Treaty itself was, of course, entered into under the constitutional treaty making power vested in the President and Senate. In that Treaty, both Germany and the United States agreed with respect to the disposition of property of the Imperial German Government then in the hands of the Alien Property Cus-

todian. The Treaty was ratified November 11, 1921. The Trading with the Enemy Act had been in effect for several years. Section 9 remained as it was originally enacted. The property of the German Government had been seized. After the ratification of the Treaty, and on March 4, 1923, the Trading with the Enemy Act was amended and all the provisions upon which the Appellees now rely were re-enacted. The machinery provided by Section 9 of the original Trading with the Enemy Act has been repeatedly approved and re-enacted by Congress, and never has there been the slightest suggestion that the United States could or should assert any claim to the property or funds of the German Government seized by the Alien Property Custodian, or that the provisions of Section 9, if applied to the property of the German Government, would be unconstitutional as being in violation of the treaty-making power vested in the President and Senate.

The Treaty of Peace between the United States and Germany was made pursuant to the Joint Resolution of Congress, known as the Knox-Porter Resolution of July 2, 1921. In its preamble, the Treaty recognizes this, and quotes and incorporates certain sections of that Resolution. A copy of the Treaty is annexed to this brief as Exhibit A. For convenience, the following sections are copied here:

"Sec. 2. That in making this declaration, and as a part of it, there are expressly reserved to the United States of America and its nationals any and all rights, privileges, indemnities, reparations, or advantages, together with the right to enforce the same, to which it or they have become entitled under the terms of the Armistice signed November 11, 1919, or any extensions or modifications thereof; or which were acquired by or are in the possession of the United States of America by reason of its participation in the war or to which its nationals have thereby become rightfully entitled; or which, under the Treaty of Versailles, have been

stipulated for its or their benefit; or to which it is entitled as one of the principal allied and associated powers; or to which it is entitled by virtue of any Acts of Congress; or otherwise.

"Sec. 5. All property of the Imperial German Government, or its successor or successors . . . which was on April 6, 1917, in or has since that date come into the possession or under the control of or has been the subject of a demand by the United States of America or of any of its officers, agents or employees, from any source or by any agency whatsoever . . . shall be retained by the United States of America and no disposition thereof made, except as shall have been heretofore or specifically hereafter shall be provided by law . . ."

The Treaty of Peace with Germany, therefore, specifically recognizes the Act of Congress pursuant to which the treaty-making power undertook to make the Treaty, and that Act of Congress provided in unmistakable terms that "all property of the Imperial German Government, or its successor or successors" or of all Germans Nationals, which, since April 6, 1917, has come into the possession of the United States, or any of its officers, agents or employees, "shall be retained by United States of America, and no disposition thereof made, except as shall have been heretofore or specifically hereafter shall be provided by law."

As has been heretofore pointed out, the express language of Section 9 of the Trading with the Enemy Act provided for the payment of debts owing by the German Government to persons not enemies, or allies of enemies, out of property of the German Government seized by the United States. The recognition of this law in the Treaty of Peace amounted to an express consent by Germany that its property could be used to pay debts of American citizens as provided in that act. And also amounted to a consent by

the United States that such property might be so disposed of without regard to any claims which it had against Germany and this is borne out by the fact that on August 10, 1922, the United States entered into an Agreement with Germany for a Mixed Commission to determine the amount to be paid by Germany in satisfaction of the claims of the United States.

Moreover, in addition to the whereases contained in the Treaty of Peace, there are other provisions in the body of the Treaty which lead to the same result.

Article I of the Treaty provides as follows:

"Article I.

Germany undertakes to accord to the United States, and the United States shall have and enjoy, all the rights, privileges, indemnities, reparations or advantages specified in the aforesaid Joint Resolution of the Congress of the United States of July 2, 1921, including all the rights and advantages stipulated for the benefit of the United States in the Treaty of Versailles which the United States shall fully enjoy notwithstanding the fact that such Treaty has not been ratified by the United States."

Article II of the Treaty provides as follows:

"Article II.

With a view to defining more particularly the obligations of Germany under the foregoing Article with respect to certain provisions in the Treaty of Versailles, it is understood and agreed between the High Contracting Parties:

(1) That the rights and advantages stipulated in that Treaty for the benefit of the United States, which it is intended the United States shall have

and enjoy, are those defined in Section 1, of Part IV, and Parts V, VI, VIII, IX, X, XI, XII, XIV, and XV.

The United States in availing itself of the rights and advantages stipulated in the provisions of that Treaty mentioned in this paragraph will do so in a manner consistent with the rights accorded to Germany under such provisions." (Treaty Series No. 658, p. 5.)

From the above it appears that Part 9 of the Treaty of Versailles was adopted in the Treaty between Germany and the United States. Article 252, contained in Part 9 of that Treaty, provides as follows:

"The right of each of the Allied and Associated Powers to dispose of enemy assets and property within its jurisdiction at the date of the coming into force of the present treaty is not affected by the foregoing provisions."

The provisions referred to (contained in Articles 248 to 251, inclusive, of the Treaty) deal with the manner in which the German Government shall pay certain of its obligations. A copy of these Articles is annexed hereto as Exhibit B.

It therefore appears that not only by the terms of the Treaty of Peace between Germany and the United States, but also by the terms of the Treaty of Versailles adopted and incorporated therein by reference, Germany expressly relinquished the right to raise any question with respect to the disposition of any property of the German Government which had been seized by the United States during the War. And it seems equally clear to us that both by the express terms of the Trading with the Enemy Act and the Treaty provisions, the United States has relinquished any interest it may have had in the funds of the German Gov-

ernment in favor of the American creditors of that Government. To conclude, in the language of the Court below, "the fund has been set aside by the Act (Trading with the Enemy Act) for the satisfaction of such claims as may be legally brought against it by Claimants other than the United States." (R. 28, Case 425.)

The decrees of the Court of Appeals should be affirmed.

Respectfully submitted,

C. C. CARLIN,
M. CARTER HALL,
Attorneys for Appellees.

November, 1925.

EXHIBIT A.

GERMANY AND THE UNITED
STATES OF AMERICA.

Considering that the United States, acting in conjunction with its co-belligerents, entered into an Armistice with Germany on November 11, 1918, in order that a Treaty of Peace might be concluded;

Considering that the Treaty of Versailles was signed on June 28, 1919, and came into force according to the terms of its Article 440, but has not been ratified by the United States;

Considering that the Congress of the United States passed a Joint Resolution, approved by the President July 2, 1921, which reads in part as follows:

"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the state of war declared to exist between the Imperial German Government and the United States of America by the joint resolution of Congress approved April 6, 1917, is hereby declared at an end.

"Sec. 2. That in making this declaration, and as a part of it, there are expressly reserved to the United States of America and its nationals any and all rights, privileges, indemnities, reparations, or advantages, together with the right to enforce the same, to which it or they have become entitled under the terms of the armistice signed November 11, 1918, or any extensions or modifications thereof; or which were acquired by or are in the possession of the United States of America by reason of its participation in the war or to which its nationals have thereby become rightfully entitled; or which, under the treaty of Versailles, have been stipulated for its or their benefit; or to which it is entitled as

one of the principal allied and associated powers; or to which it is entitled by virtue of any Act or Acts of Congress; or otherwise.

* * * * *

"Sec. 5. All property of the Imperial German Government, or its successor or successors, and of all German nationals, which was, on April 6, 1917, in or has since that date come into the possession or under control of, or has been the subject of a demand by the United States of America or of any of its officers, agents, or employees, from any source or by any agency whatsoever, and all property of the Imperial and Royal Austro-Hungarian Government, or its successor or successors, and of all Austro-Hungarian nationals which was on December 7, 1917, in or has since that date come into the possession or under the control of, or has been the subject of a demand by the United States of America or any of its officers, agents, or employees, from any source or by any agency whatsoever, shall be retained by the United States of America and no disposition thereof made, except as shall have been heretofore or specifically hereafter shall be provided by law until such time as the Imperial German Government and the Imperial and Royal Austro-Hungarian Government, or their successor or successors, shall have respectively made suitable provision for the satisfaction of *all claims* against said Governments respectively, of *all persons*, wheresoever domiciled, who owe permanent allegiance to the United States of America and who have suffered, through the acts of the Imperial German Government, or its agents, or the Imperial and Royal Austro-Hungarian Government, or its agents, since July 31, 1914, loss, damage, or injury to their persons or property, directly or indirectly, whether through the ownership of shares of stock in German, Austro-Hungarian, American, or other

corporations, or in consequence of hostilities or of any operations of war, or otherwise, and also shall have granted to persons owing permanent allegiance to the United States of America most-favored-nation treatment, whether the same be national or otherwise, in all matters affecting residence, business, profession, trade, navigation, commerce and industrial property rights, and until the Imperial German Government and the Imperial and Royal Austro-Hungarian Government, or their successor or successors, shall have respectively confirmed to the United States of America all fines, forfeitures, penalties, and seizures imposed or made by the United States of America during the war, whether in respect to the property of the Imperial German Government or German nationals or the Imperial and Royal Austro-Hungarian Government or Austro-Hungarian nationals, and shall have waived any and all pecuniary claims against the United States of America."

Being desirous of restoring the friendly relations existing between the two Nations prior to the outbreak of war:

Have for that purpose appointed their plenipotentiaries:

THE PRESIDENT OF THE GERMAN EMPIRE
Dr. Friedrich Rosen, Minister for Foreign Affairs, and

THE PRESIDENT OF THE UNITED STATES OF
AMERICA.

Ellis Loring Dresel, Commissioner of the United States
of America to Germany.

Who, having communicated their full powers, found to be in good and due form, have agreed as follows:

ARTICLE I.

Germany undertakes to accord to the United States, and the United States shall have and enjoy, all the rights, privileges, indemnities, reparations or advantages specified in the aforesaid Joint Resolution of the Congress of the United States of July 2, 1921, including all the rights and advantages stipulated for the benefit of the United States in the Treaty of Versailles which the United States shall fully enjoy notwithstanding the fact that such Treaty has not been ratified by the United States.

ARTICLE II.

With a view to defining more particularly the obligations of Germany under the foregoing Article with respect to certain provisions in the Treaty of Versailles, it is understood and agreed between the High Contracting Parties:

(1) That the rights and advantages stipulated in that Treaty for the benefit of the United States, which it is intended the United States shall have and enjoy, are those defined in Section 1, of Part IV, and Parts V, VI, VIII, IX, X, XI, XII, XIV, and XV.

The United States in availing itself of the rights and advantages stipulated in the provisions of that Treaty mentioned in this paragraph will do so in a manner consistent with the rights accorded to Germany under such provisions.

(2) That the United States shall not be bound by the provisions of Part I of that Treaty nor by any provisions of that Treaty including those mentioned in Paragraph (1) of this Article, which relate to the Covenant of the League of Nations, nor shall the United States be bound by any action taken by the League of Nations, or by the Council or by the Assembly thereof, unless the United States shall expressly give its assent to such action.

(3) That the United States assumes no obligations under or with respect to the provisions of Part II, Part III, Sections 2 to 8 inclusive of Part IV, and Part XIII of that Treaty.

(4) That, while the United States is privileged to participate in the Reparations Commission, according to the terms of Part VIII of that Treaty, and in any other Commission established under the Treaty or under any agreement supplemental thereto, the United States is not bound to participate in any such commission unless it shall elect to do so.

(5) That the periods of time to which reference is made in Article 440 of the Treaty of Versailles shall run, with respect to any act or election on the part of the United States, from the date of the coming into force of the present Treaty.

ARTICLE III.

The present Treaty shall be ratified in accordance with the constitutional forms of the High Contracting Parties and shall take effect immediately on the exchange of ratifications which shall take place as soon as possible at Berlin.

IN WITNESS WHEREOF, the respective plenipotentiaries have signed this Treaty and have hereunto affixed their seals.

Done in duplicate in Berlin this twenty-fifth day of August, 1921.

ROSEN. (Seal)

ELLIS LORING DRESEL. (Seal)

* * * * *

EXHIBIT B.

PART IX.

FINANCIAL CLAUSES.

ARTICLE 248.

Subject to such exceptions as the Reparation Commission may approve, a first charge upon all the assets and revenues of the German Empire and its constituent States shall be the cost of reparation and all other costs arising under the present Treaty or any treaties or agreements supplementary thereto or under arrangements concluded between Germany and the Allied and Associated Powers during the Armistice or its extensions.

Up to May 1, 1921, the German Government shall not export or dispose of, and shall forbid the export or disposal of, gold without the previous approval of the Allied and Associated Powers acting through the Reparation Commission.

ARTICLE 249.

There shall be paid by the German Government the total cost of all armies of the Allied and Associated Governments in occupied German territory from the date of the signature of the Armistice of November 11, 1918, including the keep of men and beasts, lodging and billeting, pay and allowances, salaries and wages, bedding, heating, lighting, clothing, equipment, harness and saddlery, armament and rolling-stock, air services, treatment of sick and wounded, veterinary and remount services, transport service of all sorts (such as by rail, sea or river, motor lorries), communications and correspondence, and in general the cost of all administrative or technical services the working of which is necessary for the training of troops and for

keeping their numbers up to strength and preserving their military efficiency.

The cost of such liabilities under the above heads so far as they relate to purchases or requisitions by the Allied and Associated Governments in the occupied territories shall be paid by the German Government to the Allied and Associated Governments in marks at the current or agreed rate of exchange. All other of the above costs shall be paid in gold marks.

ARTICLE 250.

Germany confirms the surrender of all material handed over to the Allied and Associated Powers in accordance with the Armistice of November 11, 1918, and subsequent Armistice Agreements, and recognises the title of the Allied and Associated Powers to such material.

There shall be credited to the German Government, against the sums due from it to the Allied and Associated Powers for reparation, the value, as assessed by the Reparation Commission, referred to in Article 233 of Part VIII (Reparation) of the present Treaty, of the material handed over in accordance with Article VII of the Armistice of November 11, 1918, or Article III of the Armistice Agreement of January 16, 1919, as well as of any other material handed over in accordance with the Armistice of November 11, 1918, and of subsequent Armistice Agreements, for which, as having non-military value, credit should in the judgment of the Reparation Commission be allowed to the German Government.

Property belonging to the Allied and Associated Governments or their nationals restored or surrendered under the Armistice Agreements in specie shall not be credited to the German Government.

ARTICLE 251

The priority of the charges established by Article 248 shall, subject to the qualifications made below, be as follows:

(a) The cost of the armies of occupation as defined under Article 249 during the Armistice and its extensions;

(b) the cost of any armies of occupation as defined under Article 249 after the coming into force of the present Treaty;

(c) The cost of reparation arising out of the present Treaty or any treaties or conventions supplementary thereto;

(d) The cost of all other obligations incumbent on Germany under the Armistice Conventions or under this Treaty or any treaties or conventions supplementary thereto.

The payment for such supplies of food and raw material for Germany and such other payments as may be judged by the Allied and Associated Powers to be essential to enable Germany to meet her obligations in respect of reparation will have priority to the extent and upon the conditions which have been or may be determined by the Governments of the said Powers.

ARTICLE 252

The right of each of the Allied and Associated Powers to dispose of enemy assets and property within its jurisdiction at the date of the coming into force of the present Treaty is not affected by the foregoing provisions.

Office Supreme Court,
FILED

DEC 1 1935

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935.

W. R. STANB
CL

No. 430

UNITED STATES OF AMERICA, APPELLANT,

vs.

**THE EQUITABLE TRUST COMPANY OF
NEW YORK, A CORPORATION, APPELLEE.**

No. 431

**FREDERICK C. HICKS (SUBSTITUTED FOR
THOMAS WOODNUT MILLER), ALIEN PROPERTY
CUSTODIAN, AND FRANK WHITE, TREASURER
OF THE UNITED STATES, APPELLANTS,**

vs.

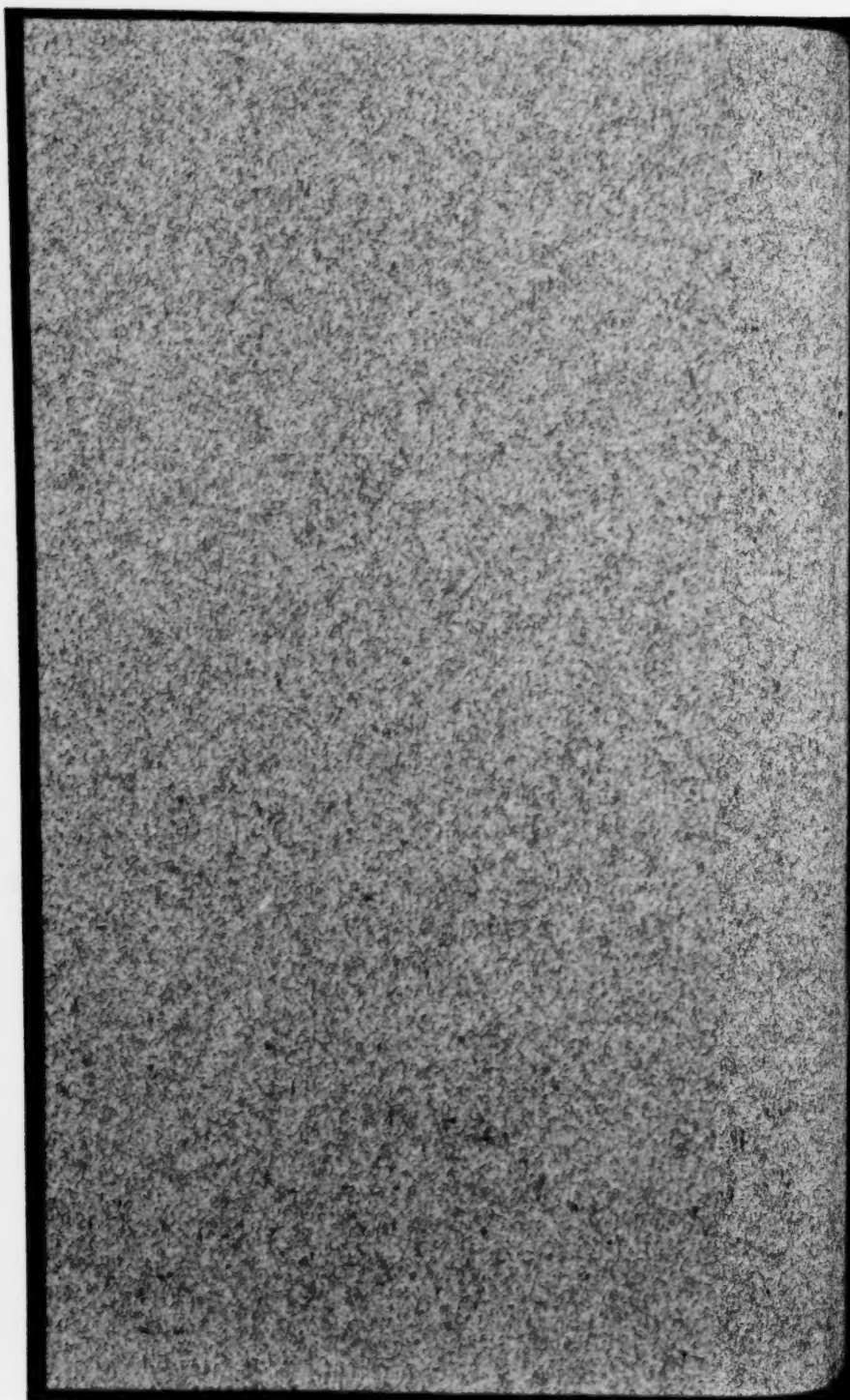
**THE EQUITABLE TRUST COMPANY OF
NEW YORK, A CORPORATION, APPELLEE.**

**APPEALS FROM THE COURT OF APPEALS OF THE
DISTRICT OF COLUMBIA.**

**BRIEF FOR THE EQUITABLE TRUST COMPANY
OF NEW YORK, APPELLEE.**

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INDEX.

TABLE OF CONTENTS.

	Page
NOTE.—Cases numbered 430 and 431 constitute in fact but a single case.....	1
Chronology	2
General statement of the case.....	6
Proceedings in Supreme Court of the District of Columbia.....	6
Proceedings in the Court of Appeals of the District of Columbia	8
Appeals to this court.....	9
The law.....	9
The pleadings.....	14
Summary of bill.....	14
Defendants' motion to dismiss.....	15
Denied	17
Summary of suggestion of rights of the United States....	17
Motion to strike out suggestion granted.....	20
Defendants' answer to plaintiff's bill.....	21
The proofs.....	21
The decree, summary of, Supreme Court of the District of Columbia	25
Defendants' appeals to Court of Appeals.....	26
Concerning errors assigned by appellants.....	26
Argument	29
As to jurisdiction of the Supreme Court of the District of Columbia	29
As to jurisdiction of the Court of Appeals of the District of Columbia	33
Merits	50
As to sufficiency of plaintiff's proofs.....	50
So-called two-court rule.....	58
Neither German Government nor United States of America necessary or proper parties to this cause.....	58
As to suggestion on part of the United States that it be permitted to share pro-rata with claimants.....	62

TABLE OF CASES CITED.

	Page
Estate of Beckwith v. Commissioner of Patents, 252 U. S., 538	49
Baldwin Co. v. Howard Co., 256 U. S., 36.....	49
Bankers' Surety Co. v. Security Trust Co., 39 Apps. D. C., 354.....	36
Barksdale v. Morgan, 34 Apps. D. C., 549, 552.....	38
Brightwood Ry. Co. v. O'Neal, 10 Apps. D. C., 205, 243.....	35
Central Trust Co. v. Garvan, 254 U. S., 554, 567, 568.....	54
Code of Law, D. C., Sec. 222.....	34
Commercial Trust Co. v. White, 285 Fed., 949, 953.....	54
Dourousseau v. United States, 6 Cranch, 307, 313.....	35, 46
Dewey v. United States, 178 U. S., 510.....	46
District of Columbia v. Prospect Hill Cemetery, 5 Apps. D. C., 497	34
Fritch, Inc., v. United States, 248 U. S., 458, 463.....	48
Hayes v. Fischer, 102 U. S., 121.....	35
<i>Re</i> Heath, 144 U. S., 92.....	46
Jones v. Smart, 1 Durnford & East, 44.....	44
<i>Ex Parte</i> Kearney, 7 Wheaton, 38.....	35
Koscinski v. White, 286 Fed., 211, 216.....	61
Laurel Oil Co. v. Morrison, 212 U. S., 291, 296.....	46
Maxwell v. Maryland, 40 Maryland Rep., 273.....	47
<i>Ex Parte</i> McCardle, 7 Wall., 506, 513.....	46
Miller, Alien Property Custodian, v. Robertson, 286 U. S., 243..	55
Munich Reissuance Co. v. First Reissuance Co., 300 Fed. (2), 345, 348.....	61
National Exchange Bank v. Peters, 144 U. S., 570.....	46
Spiegelberg v. Garvan, 260 Fed., 302.....	59
Stoehr v. Wallace, 255 U. S., 239, 244, 245.....	54
Sutherland on Statutory Construction, Sec. 431 (Ed. 1891), page 557.....	45
United States v. Nourse, 6 Peters, 470.....	35

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925.

No. 430

UNITED STATES OF AMERICA, APPELLANT,

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**APPEALS FROM THE COURT OF APPEALS OF THE
DISTRICT OF COLUMBIA.**

**BRIEF FOR THE EQUITABLE TRUST COMPANY
OF NEW YORK, APPELLEE.**

Note.

Notwithstanding the presence of a seemingly distinct and separate transcript in each of the above cases as docketed both in this Court and in the

Court of Appeals of the District of Columbia, with a distinct and separate appeal noted in each transcript and dependent thereon, the fact is that such appeals grow out of a single cause and a single course of judicial proceedings in the trial court (Supreme Court of the District of Columbia), and the two separate transcripts combined constitute but the entire transcript of the record in but a single case of equitable cognizance.

CHRONOLOGY.

Proceedings in Supreme Court of the District of Columbia.

1924, February 25. The Equitable Trust Company of New York filed its original bill in the Supreme Court of the District of Columbia, same being docketed as Equity, No. 42,270, under applicable provisions of the Act of October 6, 1917 (40 Stats. 411, ch. 106) known as the "Trading with the Enemy Act," as amended by Act of March 4, 1923 (42 Stats. 1511, ch. 285).
(R. 430 and R. 431, pp. 1-6.)

March 11. Defendants Miller, Alien Property Custodian, and White, Treasurer, "separately and severally" moved to dismiss said original bill on the grounds, among others, that:

- (a) the Imperial German Government and its successors had an interest in the subject-matter, and had not been made party thereto;
- (b) that said Imperial German Government and its successors had not consented that said Supreme Court of the District of Columbia should have jurisdiction to adjudicate claims against said (Imperial German) Government or to subject its property to the payment of claims against it;
- (c) that under "the terms and provisions of the Trading with the Enemy Act, the amendments thereto, and the treaty between the United States of America and Germany, signed August 25, 1921, * * * the United States of America became and ever since said time was

and now is the owner of the moneys which plaintiff (the Equitable Trust Company of New York) seeks in this suit to subject to the payment of her (*sic*) claim."

(R. 431, p. 7.)

- March 21. Upon consideration, after argument by counsel, said motion to dismiss was denied.

(R. 431, p. 7.)

- April 11. Suggestion, with accompanying Exhibits A, B, and C, as to the rights of the United States in the subject-matter of the litigation was filed.

(R. 430, pp. 6-17.)

- April 24. Answer of Miller and White to bill of complaint filed.

(R. 431, p. 8.)

- May 21. Motion by the Equitable Trust Company of New York to strike out above suggestion on behalf of the United States filed and granted and appeal to the Court of Appeals of the District of Columbia noted in open court.

(R. 430, p. 18.)

- May 22. Assignment of errors and designation of record *re* next above filed.

(R. 430, pp. 19-20.)

- 1924, June 14. Stipulation *inter partes* as to proofs offered by plaintiff filed. (R. 431, pp. 9-10.)
- June 19. Final decree passed and entered. (R. 431, pp. 10-11.)
- June 26. Stipulation as to statement of evidence filed.
(R. 431, p. 11.)
- June 26. Assignment of errors on behalf of defendants Miller and White and designation of record on appeal filed.
(R. 431, pp. 11-17.)

Proceedings in the Court of Appeals.

- 1925, January 7. Argument and submission of both appeals.
(R. 430, p. 21; R. 431, p. 19.)
- March 2. Opinion, by Van Orsdel, A. J.
(*Ibid.*)
- March 2. Judgment of Court of Appeals.
(R. 430, p. 28; R. 431, p. 26.)
- May 2. Assignments of error.
(R. 430, p. 29; R. 431, p. 27.)
- May 4. Order allowing appeal to Supreme Court of the United States.
(R. 430, p. 30; R. 431, p. 28.)

GENERAL STATEMENT OF THE CASE.

The Equitable Trust Company of New York (hereinafter styled the plaintiff), a corporation under the laws of the State of New York, as the purchaser for value and, since June 1, 1916, the owner and holder in its own right of five hundred thousand (500,000) dollars par value of the lawful and valid Treasury notes of the Imperial German Empire, with interest overdue thereon and unpaid since October 12, 1918, after first having given notice in writing to the Alien Property Custodian of its claim in such regard, on February 25, 1924, filed its bill in equity in the Supreme Court of the District of Columbia, as specifically authorized to do in and by section 9 of the "Trading with the Enemy Act" (Act of October 6, 1917, ch. 106, 40 Stats. 411, 419; as amended by Act of June 5, 1920, ch. 241, 41 Stats. 977, and of March 4, 1923, ch. 285, 42 Stats. 1511), to establish its interest in and right to certain moneys of the Imperial German Government which had been seized by and/or delivered to the defendant Alien Property Custodian as moneys of said Imperial German Government or an "unknown enemy" and which remained in possession or under control of said defendants Miller and White in their respective official capacities (R. 431, pp. 1-5).

Upon the pleadings filed and the evidence adduced on the trial, the learned trial court (Staf-

ford, J.) on June 19, 1924 (R. 431, p. 10), passed its final decree in the cause, declaring the Imperial German Government to have been an "enemy" within the purview of the "Trading with the Enemy Act," indebted to plaintiff, a non-enemy and non-ally of enemy, in the sum of \$500,000 and interest thereon from July 14, 1919, at 6 per cent until paid, as evidenced by certain described Imperial German Government Treasury notes; that plaintiff had duly established its debt and was entitled to be paid the amount due it, *i. e.*, \$500,000 with interest at 6 per cent from July 14, 1919, until paid, "out of funds aggregating two million seven hundred and fifteen thousand five hundred and seventy-one dollars (\$2,715,571), hereby decreed to be funds formerly belonging to said Imperial German Government, heretofore seized by defendant Thomas W. Miller, Alien Property Custodian, and held by defendant Frank White, Treasurer of the United States, to the credit of accounts standing on the books of his office identified as trust account 555 and trust account 555 special."

And further decreed that

"4. Upon presentation and surrender to him of said Imperial German Treasury notes, said defendant, Frank White, Treasurer of the United States, shall forthwith pay to said plaintiff, The Equitable Trust Company of New York and/or its duly authorized representative, the said sum of five hundred thousand dollars (\$500,000), with

interest at the rate of six (6) per centum per annum thereon from July 14th, 1919, until paid."

To review this decree, as well, also, as to review the order of May 21, 1924 (R. 430, p. 18), granting the motion of the plaintiff to strike out the certain "Suggestion of the rights of the United States," filed by its acting Attorney General as aforesaid (*Ibid.*, pp. 6, 18), the United States of America (R. 430) and the defendants Miller and White (R. 431) filed appeals to the Court of Appeals of the District of Columbia, which court, after full agreement, approved the order of dismissal and affirmed the final decree of the trial court in all respects.

The opinion of the Court of Appeals of the District of Columbia, per Van Orsdel, A. J., appears in extended form at pages 2 to 28, inclusive, of Record 430, and pages 19 to 26, inclusive, of Record 431. In view of its convenient access, we refrain from reproducing it here, though, with the single exception of its dealing with the question raised as to the jurisdiction on appeal of that tribunal, we both adopt and rely upon it as presenting in probably the clearest and most convincing form and manner the arguments in support of the contentions on the merits of the appellee here at bar.

Following logically the conclusions as announced in said opinion, the learned Court of Appeals of the District of Columbia, on March 2, 1925, entered its decree dismissing the appeal of the United States of America in case No. 430 (R. 28) and affirming in all respects and with costs to appellee the judgment of the Supreme Court of the District of Columbia (see case No. 431, pp. 10-11).

On appeals from the Court of Appeals of the District of Columbia to review the decree of dismissal in No. 430 and the decree of affirmance in No. 431, the case or cases, as preferred, is or are before this Court for consideration.

THE LAW.

This action was instituted and pressed to the judgment here drawn in question in strict accord with the authority conferred upon appellee by the Act of Congress of October 6, 1917, chapter 106 (40 Stats. 411), known as the "Trading with the Enemy Act."

By paragraph 2 of that Act (*Ibid.*, p. 411) the word "Enemy," as used therein, is and is declared and required by all officers and courts administering its provisions to be "deemed to mean, for the purposes of * * * this Act" * * * (b) the Government of any nation with which the United States is at war, or any political or municipal subdivision thereof, or any officer, official, agent or agency thereof;" while the word "person," as

used therein, is required (c) to be taken as including and as deemed to mean not only an individual, partnership, and association, but also a "company or other unincorporated body of individuals, or (d) corporation or body politic."

By paragraph 6 of said Act (*Ibid.* p. 415) the President was authorized to appoint and prescribe the duties "of an official to be known as the Alien Property Custodian, who shall be empowered to receive all money and property in the United States due or belonging to an enemy, * * * which may be paid, conveyed, transferred, assigned, or delivered to said Custodian under the provisions of this Act; and to hold, administer, and account for the same under the general direction of the President and as provided in this Act." * * *

By Section 7 of the Act (*Ibid.* p. 416) every person in the United States holding and having custody or control of any property "of any person whom he may have reasonable cause to believe to be an enemy" and * * * "who is or shall be indebted in any way to an enemy * * * or to any person whom he may have reasonable cause to believe to be an enemy shall * * * report the fact to the Alien Property Custodian by written statement under oath, containing such particulars as such Custodian shall require" * * * and if the President shall so require such money or other property "shall be conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian."

By Section 9 of said Act (omitting for the moment reference to amendments thereof) "any person, not an enemy, claiming any interest, right or title in any money or other property which may have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian hereunder, and held by him or by the Treasurer of the United States, or to whom any debt may be owing from an enemy, * * * whose property or any part thereof shall have been conveyed, transferred, assigned, delivered or paid to the Alien Property Custodian hereunder, and held by him or by the Treasurer of the United States, may file with the said Custodian a notice of his claim under oath * * * and the President, if application is made therefor by the claimant, may, with the assent of the holder of said property * * * order the payment * * * or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States or of the interest therein to which the President shall determine said claimant is entitled;" and "if the President shall not so order * * * or if the claimant shall have filed the notice as above required, and shall have made no application to the President, said claimant may * * * institute a suit in equity in the district court of the United States, for the District in which the claimant resides, or, if a corporation, where it has its principal place of business (to which suit the Alien Property Custodian or the Treasurer

of the United States, as the case may be, shall be made a party defendant), to establish the interest, right, title or debt so claimed, and if suit shall be so instituted, then the money or other property of the enemy * * * shall be retained in the custody of the Alien Property Custodian or in the Treasury of the United States, * * * until any final judgment or decree which shall be entered in favor of the claimant shall be fully satisfied by payment * * * by the defendant or by the Alien Property Custodian or Treasurer of the United States on order of the Court, * * * or (the) suit, otherwise (be) terminated."

By Section 12 of the said Act, as originally enacted, it was provided "that all moneys (including checks and drafts payable on demand) paid to or received by the Alien Property Custodian pursuant to this Act, shall be deposited forthwith in the Treasury of the United States," * * * and "after the end of the war any claim of any enemy * * * to any money or other property received and held by the Alien Property Custodian or deposited in the United States Treasury shall be settled as Congress shall direct; *Provided*, however, That on order of the President as set forth in Section 9 hereof, or of the Court, * * * the Alien Property Custodian or Treasurer of the United States, as the case may be, shall forthwith convey, transfer, assign, and pay to the person to whom the President shall so order or in whose behalf the Court shall enter final judgment or decree,

any property of any enemy * * * held by
 said Custodian or by said Treasurer, so far as may
 be necessary to comply with said order of the Presi-
 dent or said final judgment or decree of the court ;”
 * * *

By section 17 of said Act it was further pro-
 vided:

“SEC. 17. That the district courts of the
 United States are hereby given jurisdiction
 to make and enter all such rules as to the
 notice and otherwise for all such orders and
 decrees, and to issue such process as may be
 necessary and proper in the premises, to
 enforce the provisions of this Act, with a
 right of appeal from the final order or de-
 cree of such court as provided in sections
 128 and 238 of the Act of March 3d, 1911,
 entitled ‘an Act to codify, revise and amend
 the laws relating to the Judiciary.’ ”

By the Act of July 11, 1919, chapter 6 (41 Stats.
 35), and subsequent amendatory acts, said Section
 9, as above extracted, was amended so as to permit
 of the institution by such claimants either “of a
 suit in equity *in the Supreme Court of the District
 of Columbia* or in the district court of the United
 States for the district in which such claimant
 resides, or, if a corporation, where it has its prin-
 cipal place of business, to which the Alien Prop-
 erty Custodian and the Treasurer of the United
 States, as the case may be, shall be made party
 defendant, to establish the interest, right, title, or

debt so claimed, and if suit shall be so instituted, then the money or other property of the enemy shall be retained," &c., &c., as above.

But at no time, either prior to the institution of the suits covered by the appeals now before this Court or at any time since, has said Section 17 of the Trading with the Enemy Act, as above quoted, been altered or amended or the rights of appeal in cases instituted under the provisions of said Section 9, as amended, been enlarged.

THE PLEADINGS.

By its original bill in equity, in addition to the formal identification of the parties, plaintiff averred—

(1) enactment and existence of the law of the Imperial German Empire authorizing the loan and the treasury notes here sued on issued in connection therewith (R. 2);

(2) the issuance of the notes in suit (R. 3);

(3) the acquisition for value on or about June 1, 1916, by Plaintiff of par \$500,000 thereof (R. 3);

(4) the payment by debtor of interest at 6 per cent thereon to October 12, 1918—and that since June 1, 1916, Plaintiff had been and had continued to be the owner and holder for value in its own right of the treasury notes of the German Empire so acquired (R. 4);

(5) that by virtue of his authority under the provisions of the "Trading with the Enemy Act"

and the Executive Orders of the President of the United States pursuant thereto, said Miller, Alien Property Custodian, had caused to be paid, * * * transferred * * * and delivered to him certain funds of the Government of the Imperial German Empire in this country, and that said funds remained held by said Alien Property Custodian or subject to his order, or by defendant White, Treasurer of the United States (R. 4);

(6) the existing (present) Government of Germany as successor in interest and estate of the Imperial German Government had admitted its indebtedness to Plaintiff upon the Treasury notes in question "and has consented in writing to the payment of the principal and interest of said indebtedness out of the funds, securities and other properties in possession or under control of defendants Miller, Alien Property Custodian, and/or White, Treasurer of the United States" (R. 4);

(7) that Plaintiff had filed the requisite notice of claim with the Alien Property Custodian and had made application for allowance thereof to the President, which application prior to suit brought had been denied (R. 4, 5);

(8) that Plaintiff is not and never was an "enemy within the purview of 'The Trading with the Enemy Act'" (R. 5).

Defendants Miller and White appearing generally, by counsel, moved (R. 7) to dismiss Plaintiff's bill of complaint because

1. It appears from the bill of complaint that the Imperial German Government and its successor has an interest in the subject-matter of the suit and has not been made party thereto;

2. That it did not appear from the bill of complaint that said Imperial German Government or its successor had consented that the Supreme Court of the District of Columbia should have jurisdiction to adjudicate claims against said Government or to subject its property to the payment of claims against it;

3 and 4. That the bill of complaint was without equity within the general jurisdiction of said court and did not state facts sufficient to entitle it to relief under the provisions of section 9 of the "Trading with the Enemy Act," and

5. That pursuant to the provisions of said "Trading with the Enemy Act" as amended and the treaty between the United States of America and Germany, signed August 25, 1921, effective at the institution of suit herein, "the United States of America became and ever since said time was and now is the owner of the moneys which plaintiff seeks in this suit to subject to the payment of her (its) claim." *

On consideration, after argument by counsel for the moving parties, this motion to dismiss the bill of complaint was denied (R. 7).

*Unless otherwise specified, all italics are supplied by authors of this brief.

Thereupon, on April 11, 1924, came "the United States of America by Harlan F. Stone, its Attorney General," and respectfully suggested to said Supreme Court of the District of Columbia that

(1) The United States of America was a body politic and was neither an enemy (of or to itself) nor an ally of an enemy (of or to itself) within the meaning of the "Trading with the Enemy Act," the amendments thereto and the proclamations and Executive orders issued thereunder;

(2) That the Imperial German Government was such an enemy.

(3 to 11, both included.) That during the World War, and in accord with pertinent acts of the Congress, the United States had issued, for value, certain policies of insurance upon certain named vessels and their cargoes, and upon the lives of their crews; that certain of said vessels and cargoes were destroyed, certain members of their several crews were killed by armed vessels of the Imperial German Government; by reason of which destruction and killings the United States became liable upon such policies of insurance to pay large sums of money, which it paid, and thereupon "became entitled to recover from Germany the said sums of money disbursed under said policies by reason of the destruction of said vessels, cargoes and lives by Germany," by reason whereof "there is now due and owing to the United States of America *from the successor* of the Imperial German Government, the sum of \$29,304,553.39, for all of which

Germany has agreed to reimburse the United States of America (Record No. 430, pp. 6, 7).

(12) That it is alleged in the plaintiff's bill of complaint that there is in the Treasury of the United States or in possession of the Alien Property Custodian a large amount of money which "at the time of the seizure thereof (was) the property of the Imperial German Government"; that if plaintiffs show such money to have been at time of its seizure money of the Imperial German Government, the United States is entitled to assert its claim thereto, "either prior to the claim of the plaintiff or upon a *pro rata* basis with the claim of the plaintiff";

(13) That the United States is entitled to receive payment of the sum claimed by it out of any money of the Imperial German Government;

(14) That of the total amount above claimed, \$16,620,436.05, was due and owing to the United States prior to October, 1917; and

(15) That "notice of claim under oath and in the form required by the Alien Property Custodian pursuant to the terms and provisions of the Trading with the Enemy Act" and amendments thereto and proclamations and Executive orders thereunder had been given by it.

(16, 17, 18) That numerous suits against said Miller and White in their official capacities are pending, the plaintiffs wherein seek to recover as creditors of the Imperial German Government, out of the moneys now held by the Treasurer of

the United States, far in excess of the amount actually held by the latter, and if

(19) Said plaintiffs should be allowed "to secure satisfaction of their claims out of the said funds to the exclusion of the United States, (the latter) will suffer an irreparable injury and there will be an undue preference as between creditors of the Imperial German Government" and its successors (R. 4207, p. 9).

(20) That "by treaty the Imperial German Government (*sic*) and its successor have agreed with the United States to make certain payments and restitutions, and that by later agreement a "Mixed Claims Commission" has been established "to determine the liability and to fix the amount of the awards due from the Imperial German Government to the United States and its citizens, but without specific provision for payment"; that some of such awards have been made, but "*this* is the only fund *now* available belonging to the Imperial German Government from which awards can be satisfied or indebtedness be paid," and if judgments be secured in the pending suits and the decrees be satisfied this fund will be exhausted and nothing would be left out of which the United States and other creditors could secure their said claims, and that such process would be an inequitable preference of creditors.

Wherefore the United States of America, being neither a party to the cause nor asking to be made such, prayed that

- (a) plaintiff's bill of complaint be dismissed;
- (b) that the indebtedness of the United States as set forth "be determined by this court as a valid and existing indebtedness and *that the Treasurer of the United States be ordered and directed to pay to the United States the amount thereof out of the funds as aforesaid or to the extent thereof.*"
- (c) that the United States be awarded priority over all other claims or at least be declared entitled to share *pro rata* with other claimants in the distribution of said fund;
- (d) that the court take jurisdiction of the claims of the United States against the Imperial German Government and grant such other relief as may be required and to the court may seem just (R. 430, page 9).

This interesting and quite unique document—we dare not style it a pleading—is verified by the oath of Frank T. Hines, whose identity is not disclosed nor the means by which he became acquainted in such detail with the matters so set forth.

Motion to strike out this "Suggestion" on grounds stated therein was filed and promptly granted, and from such action of the learned trial court, the United States of America noted and perfected its appeal to the Court of Appeals of the District of Columbia (R. 430, p. 18).

Thereupon defendants Miller and White filed answer to plaintiff's bill of complaint (R. 430, p. 8), whereby they admitted the truth of plaintiff's averments as set forth in paragraphs 1, 2, 3, and 8 of plaintiff's bill of complaint, and in stilted formal terms declared lack of knowledge or information "sufficient to form a belief with respect to the averments contained in paragraphs 4, 5, 6, 7, and 9 thereof, "and therefore demanded strict proof thereof."

THE PROOFS.

On the trial it was conceded by defendants that the English translation of the law of the Imperial German Empire of 24th December, 1915, as set forth in paragraph 4 of the plaintiff's bill, was a correct and appropriate translation of the German text of said law as published in the "Reichsgesetzblatt" for 1915; that plaintiff was the holder as averred in the bill, for value of Imperial German Empire treasury notes of the character and in the amounts and aggregate averred in plaintiff's said bill of complaint (R. 431, p. 9). Over objection and exception by defendants, based "on the ground of immateriality and incompetency," there was introduced and admitted in evidence the sworn answer of defendants Miller and White filed by them and yet remaining on file in the Supreme Court of the District of Columbia in case of *The Mechanics Securities Corporation v. said defendants*, Equity, No. 41,284 (case No. 423 in this

Court), wherein over the signature and oath of each said Miller and White, it is admitted that Chandler & Company, Inc., as trustee, on or about February 13, 1920, had filed notice of claim under Section 9, "Trading with the Enemy Act," for \$96,580.55, previously delivered by said Chandler & Company, Inc., to the Alien Property Custodian "as the money of the Imperial German Government," asserting that said sum of money "had been deposited with the claimant (Chandler & Company, Inc.) prior to October 6, 1917, for the payment of interest on notes of the Imperial German Government"; that said claim, after investigation, was allowed by the Attorney General of the United States, to whom the President had delegated his authority under the terms and provisions of said "Trading with the Enemy Act"; that the Attorney General had found that said money had been paid to said Chandler & Company, Inc., unqualifiedly, and was held by the latter as trustee for the holders and owners of said German Government Treasury notes, and he had ordered said sum of \$96,580.55 to be paid to said claimant, Chandler & Company, Inc., out of the money held in the Treasury of the United States in Trust numbered 555 as the property of the Imperial German Government and same was so paid; that thereafter the Alien Property Custodian, in the due exercise of his powers under said Act, the amendments thereto and the executive orders issued thereunder, after investigation had determined that the Im-

perial German Government was an enemy within the meaning and purview of said Trading with the Enemy Act," and that certain other moneys, amounting to \$515,571, were owing or belonging to, held for, by, on account of, and for the benefit of the said Imperial German Government, and had required said moneys to be delivered and paid to him, said Alien Property Custodian, to be administered and accounted for as provided by law; that such demands were fulfilled, said moneys were paid to him and in turn by him were paid to the Treasurer of the United States, and were by said Treasurer *held to the credit of the Alien Property Custodian in Trust No. 555*; that thereafter said Alien Property Custodian, again acting as aforesaid and after investigation, had determined that certain other moneys, "in the approximate amount of five million dollars (\$5,000,000) (was) held for, by, on account of, and for the benefit of an unknown enemy" and required said moneys to be paid to him, and said demand having been fulfilled, said sum of \$5,000,000 (to which must be added \$77,057.64 interest) was likewise paid by him to the Treasurer of the United States and on the books of the Treasury Department was placed to the credit of unknown enemy (or undisclosed enemy) No. 1, in *Trust No. 9322*; that thereafter on or about March 8, 1923, said Alien Property Custodian had determined that \$2,200,000 of the gross sum of \$5,000,000 received by him as aforesaid was, at the time of demand for and receipt thereof, held for, by, on

account of, and for the benefit of the Imperial German Government, and that the Alien Property Custodian had directed the Treasurer of the United States to transfer from said Trust No. 9322, the sum of \$2,200,000 and to place the same to the credit of the Imperial German Government in an account on books of the Treasury of the United States to be designated as "Trust No. 555, Special," and said amount of \$2,200,000, pursuant to said instructions, was so transferred by said Treasurer of the United States; and as of June 13, 1924, so remained to credit of said Trust No. 555, Special, for account of the Imperial German Government, it being stated in the correspondence between the offices of Alien Property Custodian and the Secretary of the Treasury that said funds "so set aside are to be used for the Imperial German Government in connection with Claim No. 386 (see Alien Property Custodian Report for year 1923, at p. 111) and the claims associated therewith" (Record 425, pp. 17, 18; also Record No. 431, p. 11).

These proofs were all offered by or on behalf of Plaintiff, and together with a certain letter dated March 14, 1924, from the Alien Property Custodian to the Honorable the Secretary of the Treasury, Division of Bookkeeping and Warrants, which at date of trial and judgment in the trial court, and until now so far as appears, remained unacted upon by the addressee, admitted in evidence over objec-

tion and exception by Plaintiff on tender by Defendants, constituted all the evidence and testimony given on the trial (Record 425, pp. 20, 23).

THE DECREE.

The learned trial justice found as fact and decreed—

(1) That Plaintiff, The Equitable Trust Company of New York, was not and never had been an enemy or ally of enemy;

(2) That the Imperial German Government was “enemy” within the purview of the “Trading with the Enemy Act” and prior to October 6, 1917, had become indebted to Plaintiff in the sum of \$500,000 with interest thereon as evidenced by certain described Treasury notes (being those specifically identified in Plaintiff’s bill of complaint);

(3) That Plaintiff had duly established its said debt and is entitled to be paid \$500,000, with interest at 6 per cent from July 14, 1919, “out of funds aggregating two million seven hundred and fifteen thousand five hundred and seventy-one dollars (\$2,715,571) *hereby decreed* to be funds formerly belonging to said Imperial German Government, heretofore seized by Defendant, Thomas W. Miller, Alien Property Custodian, and held by Defendant, Frank White, Treasurer of the United States, to the credit of accounts standing on the books of his office identified as trust account 555, and trust account 555 special;”

And, further, that upon presentation and surrender to him of said Imperial German Government Treasury notes, said Defendant White, Treasurer of the United States, should "forthwith" pay to Plaintiff "and/or its duly authorized representative" said sum of \$500,000, with interest at the rate of six (6) per centum per annum thereon from July 14, 1919, until paid" (Record 4208, pp. 10, 11).

THE APPEALS.

From this decree, as well as from the order of the trial court striking out defendants' "Suggestions" as to the specially claimed rights of the United States in the funds in question, the defendants appealed to the Court of Appeals of the District of Columbia, which Court, on hearing, upheld the actions and decrees of the trial court in every particular (R. 430, p. 28; R. 431, p. 26).

To review such action of the Court of Appeals, defendants Miller and White, in color of their respective offices, have brought the case here.

Errors Assigned by Appellants.

On the appeals to this Court, said appellants have assigned, as stated in the two transcripts of record, Nos. 430 and 431, 20 errors "intended to be urged," ten in case No. 430 and likewise 10 in case 431.

Of the errors assigned and intended, as stated, to be urged in connection with the appeal in case

No. 431, it may be of service to say that the alleged errors numbered 1, 2, and 12 seem to be but a reiteration in different forms of protest against the action of the Court of Appeals of the District of Columbia in affirming the judgment of the trial court. As these three assignments involve and seemingly depend primarily upon consideration of the merits, we will discuss same generally in connection with assignments numbered 8, 9, 10, and 11, which will be considered together, thus in effect permitting argument of assignments 1, 2, 8, 9, 10, 11, and 12 as a single assignment of error.

Assignments 5 and 6, which question the jurisdiction of the Supreme Court of the District of Columbia in the premises, together constitute in fact but a single assignment of error and will be considered together.

Assignment number 7 in this group would seem to be entirely immaterial in the present aspect of the cause, and therefore will be only touched upon lightly if at all.

Much the same process, at least of consolidation, may be applied with respect to the ten assignments of error "intended to be urged" in connection with the appeal in case numbered 430. As each and every of the ten so-called assignments revolve about a single point, it has seemed to us that it would be quite sufficient and perhaps entirely satisfactory to the Court if we should argue them all

together and in general as constituting but a single assignment of alleged error directed to the action of the trial court, upheld, as it was, by the Court of Appeals of the District of Columbia, in ruling out of the case the "Suggestion as to the rights of the United States" which was filed in the cause and appears at page 6 in Record No. 430.

The purpose of the assignments of error "intended to be urged" and so numerously extended in the brief for appellants would seem to have been rather by way of establishing a "bogey" or specter calculated to chill the fervor of opposing counsel than truly to afford bases for arguments to persuade the court to conclusions adverse to those arrived at by the two concurring courts of the District of Columbia, for after meticulously stating such assignments in their several and reiterated aspects on pages 20 to 23, both inclusive, of appellants' brief, they are not again referred to, either separately or generally, in the course of appellants' "Argument" (Brief, pp. 24-71, both inclusive).

Appellants divide their "Argument" into three parts under significant and inclusive headings (see Table of Contents, Appellants' Brief I, pp. 24, 37 and 63), the third point (III) being again subdivided into three subordinate points (*Ibid.* pp. 63, 66 and 68). As the plan of argument sketched is of appellants' making, we venture our part likewise to ignore the assignments

error as separately framed and will endeavor to meet appellants' general arguments for reversal by like general arguments in reply.

ARGUMENT.

I.

Appellant urges want of jurisdiction on part of the Supreme Court of the District of Columbia, to entertain these suits, not because of want of jurisdiction on its part to entertain suits by non-enemy persons and corporations claiming an interest in money or other property delivered or paid to or seized by the Alien Property Custodian or "to whom any debt may be owing from an enemy * * * whose property or any part thereof shall have been delivered or paid to or seized by" said official, but because, as stated, adjudication of the claims asserted in the instant cases would "involve an adjudication as to the conduct and obligations of a foreign sovereign."

Appellee does not feel called upon to oppose the general principle that a sovereign state or its ruler cannot be haled to the bar of the court of another sovereign and made to respond in defense, either directly, or indirectly, as by attaching his goods or ships. The *ratio decidendi* and the conclusions reached and announced by this Court in *Underhill v. Hernandez*, 168 U. S. 250; *Oetjen v. Central Leather Company*, 246 U. S. 297; *American Banana Company v. United Fruit Company*, 213 U. S. 347,

and *Ricaud v. American Metal Company*, 246 U. S. 304, are conceded without reserve. But in the instant cases we not only doubt, but we venture quite emphatically to deny both the appositeness and the application of any of the principles laid down in those cases.

Each and every of the cases cited and relied upon by appellants and the principles of decision therein enunciated as firm rules of international polity and national action involved peace-time considerations and presuppose the continuance of friendly or at least respectful intercourse between the sovereign entities concerned, but before the United States of America, as sovereign, achieved existence it was an axiomatic commonplace to assert that in the midst of arms the laws are silent, and it requires no imagination to include with the laws those principles of courteous intercourse which serve to promote and conserve international relations on friendly altars. Of what use is it to consider the results which flow from international good will when neither good will nor even permissible intercourse exists and the only interchange between the sovereignties concerned and their respective nationals is by means of shot and shell and poison gas?

As between the appellant and the Imperial German Government and its successor government it cannot well be doubted that at date of suit there was a debt due from the latter to the former, which

in amount was both measured and ascertainable from the terms of the overdue Treasury notes sued upon. That debt was due to an American citizen and was payable in dollars in the United States. When the contract to pay was broken the American creditor had a claim here in the United States not only for the debt itself, but, at creditor's option, for damages, measured in dollars by the terms of the contract breached.

In the event of money or property of the "enemy" debtor paid to or seized by the Alien Property Custodian and in his possession or in that of the Treasurer of the United States, the "Trading with the Enemy Act" on its face gave remedy and invited action.

By section 9 of that Act "any person not an enemy," and appellee was not "enemy," claiming any interest in money seized by the Alien Property Custodian or to whom any debt may be owing from an enemy whose property shall have been seized by or paid to the Alien Property Custodian, "may institute a suit in equity in the Supreme Court of the District of Columbia * * * to establish the interest, right, title, or debt so claimed; and, if so established, the court *shall* order the payment * * * to said claimant of the money * * * so held by the Alien Property Custodian or by the Treasurer of the United States or the interest therein to which the court shall determine said claimant is entitled."

By express terms of the Act, the word "enemy" as used therein is peremptorily required to be accepted by all, including the courts, and to be deemed to mean "(b) The government of any nation with which the United States is at war." In view of the indisputable facts, judicially to be noted even if not formally proven, could definition more aptly identifying the German Government be conceived or framed?

The "Trading with the Enemy Act" was framed and enacted by the Congress in the exercise of its constitutionally granted war powers. Its application was to "enemy" property seized by force in the midst of arms. Such property when so seized might well have been confiscated by the state for its sole benefit and enjoyment. To waive confiscation and to dedicate the fruits of its power to the satisfaction of debts due from the enemy to non-enemies was an act of grace of which neither the vanquished "enemy" nor the Alien Property Custodian nor the Treasurer of the United States ought effectively to complain.

The Act does not purport to bind a foreign sovereign in the exercise of its sovereign rights save only as the victor may dictate terms to the vanquished. It purports to make disposition according to the will of the Congress of certain public property of the United States, for when the United States, in the exercise of its undoubted war powers, "seized" or otherwise acquired possession of "enemy property," that property no longer be-

longed to or formed an asset of the "enemy" owner, but it became spoils of the victor, to be dealt with as the victor might decree. In our view the jurisdiction of the Supreme Court of the District of Columbia to judicially deal with the money seized by and in possession of the Alien Property Custodian or Treasurer of the United States, as the case may be, cannot convincingly be doubted, and this irrespective of the personal or political character of the "enemy" to whom or which it originally belonged.

But while the jurisdiction of the Supreme Court of the District of Columbia in the instant premises is both readily ascertainable and not successfully to be denied, we do entertain strong doubts of the jurisdiction of the Court of Appeals of the District of Columbia to review the decrees of the former court in these suits, and if this doubt be well founded then the judgment of the Court of Appeals, notwithstanding its affirmance of the decree of the trial court, should be reversed and the cases remanded to the Court of Appeals with directions to dismiss those appeals.

The doubt thus indicated arises as follows:

The cases were brought in the Supreme Court of the District of Columbia, not under the provisions of Section 61 of the Code of Law for the District of Columbia, which confer and define the jurisdictional powers in general of that court; on

the contrary, because such powers so conferred were insufficient for the purpose, special and specific powers were conferred upon that court with respect to a subject-matter of limited and particular character, viz, money or property paid to or seized by the Alien Property Custodian and held by him or the Treasurer of the United States—in other words, particular provisions were made for disposing of the spoils of war.

In such circumstances the so-called right of appeal is not an absolute right of any party to the cause who may feel himself aggrieved by the decision of the court of first instance. Appeals may be and are allowed or withheld or curiously regulated without violation of any inherent or inalienable right of litigants.

It is true that Section 226 of the Code of Law for the District of Columbia quite broadly provides that—

*“Any party aggrieved by any final order, judgment, or decree of the Supreme Court of the District of Columbia * * * may appeal therefrom to the said Court of Appeals (of the District of Columbia), and upon such appeal the Court of Appeals shall review such order, judgment, or decree, and affirm, reverse, or modify the same as shall be just * * *”*

but in *District of Columbia v. Prospect Hill Cemetery*, 5 Appeals D. C. 497, where the preliminary question was whether an appeal to the Court of

Appeals of the District of Columbia from a certain order of the Supreme Court of said District could be sustained, the Court of Appeals unanimously held that it could not, saying (per Mr. Justice Morris) at page 511:

"A writ of error or appeal will lie only where it is authorized either by special or general law, *United States v. Nourse*, 6 Peters 470, 494; *Ex parte Zellner*, 9 Wallace 244. It will not lie where there is a special statutory jurisdiction of an unusual character conferred upon the court below, without any provision for an appeal."

Citing:

United States v. Nourse, 6 Peters 470;
Hayes v. Fischer, 102 U. S. 121;
Ex parte Kearney, 7 Wheaton 38;
Durousseau v. United States, 6 Cranch 307,
 313.

To like effect are the opinions and conclusions of said Court of Appeals of the District of Columbia as announced in

Brightwood Railway Co. v. O'Neal, 10 App.
 D. C. 205, 243 (bottom),

where it is said (p. 244):

"In our country, where the judicial system, notwithstanding apparent resemblances, differs radically from that of England, the right of appeal has always been recognized as the creature of statutory en-

actment, subject not only to be regulated and even taken away by such enactment, but even requiring express provision of law for its existence. Such is the case even with a tribunal so purely appellate in its character as the Supreme Court of the United States, which has itself distinctly and repeatedly held that it can exercise only such appellate power as is given it by Congress. *Baltimore & Potomac R. Co. v. Grant*, 98 U. S. 398; *McKane v. Durston*, 153 U. S. 684, 687; *Andrews v. Swartz*, 156 U. S. 272, 275; *Dourousseau v. United States*, 6 Cranch 307.

“We conclude that the so-called right of appeal is not an absolute or inalienable right of parties, but that it may be given, regulated, or taken away by Act of Congress without violation of any inherent right.”

and in *Bankers Surety Co. v. Security Trust Co.*, 39 App. D. C. 354, where it is said (per Mr. Justice Robb), at page 356:

“In the United States the right of appeal is not dependent upon any principle of the common law or upon any inherent power of one court to review the decisions of another, but is founded solely upon statutes.”

Again, the statutory right of appeal to this Court vouchsafed by section 226 of the Code, D. C., is limited to “any *party* aggrieved by any final * * * decree of the Supreme Court of the District of Columbia.”

Thus the very words of the statute would seem quite clearly to make an end of the so-called appeal by the United States of America in case 430 and other similar cases, for the United States was not a *party* in any sense or aspect of the case in the court below, and it never at any time sought to have itself made a *party* by intervention or otherwise. On the contrary, for reasons presumably known and satisfactory to its able counsel, it apparently sedulously sought to avoid submitting itself to the control of the court as a party to the cause.

And likewise the same words of the statute would seem to make an end of the appeal taken and perfected in case No. 431, for in the circumstances it would seem to be more than difficult for either of the defendants Miller or White to demonstrate that he was *aggrieved* by the decree of the lower court to which the appeal is directed. For it is certain that by the payment to or seizure by the Alien Property Custodian, that officer acquired no interest in the money or property itself other than as a simple bailee, subject to the order of the President or of the Supreme Court of the District of Columbia, it being provided in the statute itself that upon the establishment by claimant of the interest, title or debt claimed by him "the court *shall* order the payment * * * or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the

United States, or the interest therein to which the court shall determine said claimant is entitled."

When the court, acting within the sphere of its jurisdiction as prescribed by the statute, has spoken, the Alien Property Custodian and the Treasurer of the United States have no option but to submit to its decree, and, no matter what either or both may think as to the propriety or righteousness of either an order of the President or any decree of the court, neither the one nor the other has any such interest in the funds, the *res*, and the object of the suit, as will cause grief by reason of the disposition, whether executive or judicial, which may be made of it.

As said by the Court of Appeals, D. C., in *Barksdale v. Morgan*, 34 App. D. C. 549, 552 (per Mr. Justice Van Orsdel):

* * * "It is clearly apparent that the motion to dismiss must be sustained. Under our statute, it is a condition precedent to the right of appeal that the *appellant must show that he is directly aggrieved* by the order appealed from."

How can it be said with truth that either of the defendants Miller and White were in fact "directly aggrieved by the" decree appealed from. If it cannot be so said, then the appeal should have been dismissed.

Again, the Congress itself, when dealing with the "Trading with the Enemy Act," by way of amend-

ment quite evidently was of opinion that in the absence of some special provision for appeals, the pre-existing general provisions of law would have no application in actions brought under Section 9 (a), for while in said Section 9, as amended, it authorized resort by claimants to both the Supreme Court, D. C., and to the District Courts of the United States, in Section 17 of said Act it painstakingly conferred jurisdiction only upon such District Courts to make and enter necessary

“rules as to notice and otherwise, and all such orders and decrees, and to issue such process as may be necessary and proper in the premises to enforce the provisions of this Act, with a right of appeal from the final order or decree of such court as provided in sections one hundred and twenty-eight and two hundred and thirty-eight of the Act of March third, nineteen hundred and eleven, entitled ‘An act to codify, revise and amend the laws relating to the judiciary.’”

No other provision recognizing or providing for the taking of appeals to any appellate tribunal is contained in the Act.

If appeals from the orders and decrees of the Supreme Court of the District of Columbia to said Court of Appeals were intended, why did the Congress deem it necessary to make special provision for appeals in cases instituted in the District Courts of the United States while maintaining silence with

regard to similar cases instituted in the Supreme Court of the District of Columbia?

If the pre-existent and broadly inclusive statute, viz., Section 128 of the Judicial Code, which provides for review in the Circuit Courts of Appeal of the judgments and decrees of the District Courts of the United States,

“In all cases other than those in which appeals and writs of error may be taken direct to the Supreme Court, as provided in section two hundred and thirty-eight (of the Judicial Code) unless otherwise provided by law.”

was deemed insufficient to authorize appeals in Section 9 of “Trading with the Enemy Act” cases, initiated in said District Courts, how is it reasonable or even arguable that the quite similar and no broader or more inclusive provisions of Section 226 of the Code, D. C. (see *supra*), should be given greater effect.

Again, it is to be both noted and borne in mind that in cases of application by claimant for allowance made to the President and in event of order for payment being made by him, no provision for appeal by the Alien Property Custodian or Treasurer to any other authority or power is even hinted at, either in the “Trading with the Enemy Act” or elsewhere.

That statute provides in cases submitted to the President that he *may* order payment to be made to claimant White, while in cases instituted in the Supreme Court of the District of Columbia and in the District Courts of the United States it is mandatorily provided that such courts "*shall* order the payment" to be made to claimant of what may have been found to be his.

Section 9 (*a*), as we think, neither requires nor contemplates an appeal from or review of action by the Chief Executive, nor of the judicial proceedings had in the Supreme Court of the District of Columbia in connection with any such claims. This is of consequence, for it is to be borne in mind always that the "Trading with the Enemy Act," and the very Section 9 under which such applications must be made and suits, if any, must be brought, as it was originally enacted and as it remains today, though otherwise greatly amended, expressly provided and still provides that

"Except as herein provided, the money or other property conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian, shall not be liable to lien, attachment, garnishment, trustee process, or execution, or subject to any order or decree of any court."

If the action of the President alone, without more, was considered sufficiently to safeguard the interests of the United States and its Alien Property Custodian in the case of claims administra-

tively allowed and ordered to be paid, is it reasonable to assume that judicial action by Federal courts of record would afford any the less protection?

Why is an appeal to review the conclusions of a competent court made after full hearing in the open more to be desired than the review of an executive order which may have been arrived at on *ex parte* proceedings, without public hearing, and which may be made known to the necessary subordinate officials without publicity of any general sort? Comparison of the provisions of the Act permitting resort to either the President or the Supreme Court of the District of Columbia at claimants' choice demonstrates that appeals to review the orders which may be rendered by either is not specifically provided in either case.

While expressly authorizing suits to be instituted both in the Supreme Court of the District of Columbia and in the United States District Courts, the Congress expressly provided for appeals to the Circuit Courts of Appeal from the orders and decrees of the District Courts alone. We are not required to speculate as to the reasons which induced the distinction. For all present purposes the meticulous specification of the one would seem to call quite obviously for the exclusion of the other. *Expressio unius est exclusio alterius.*

Of course, it may be said that Section 9 (a) of "The Trading with the Enemy Act" as originally enacted October 6, 1917 (40 Stats. 411) authorized resort solely to District Courts of the United States, no reference being made therein to the Supreme Court of the District of Columbia, hence the right of appeal provided for in Section 17 of that Act naturally only covered appeals from judgments of such District Courts.

Resort by claimants to the Supreme Court of the District of Columbia was authorized and provided for by the amendatory act of July 11, 1919 (41 Stats. 35) which made no reference whatever to Section 17 of the Act as then existing, and likewise contained no provision for the taking of appeals from such final orders and decrees as the Supreme Court of the District of Columbia might make.

All circumstances considered, the legislation, *i. e.*, the "Trading with the Enemy Act," whether considered in detail or viewed as a whole, clearly contains no express or affirmative provision for appeals from final orders or decrees of the Supreme Court of the District of Columbia in such cases.

Right of appeal from the final orders and decrees of District Courts of the United States alone remains affirmatively and clearly provided for. There being no ambiguity of statement or expression no room for construction is afforded.

If by analogy and in reason, appeals in the for-

mer case be thought to be both as pertinent and advisable as in the latter, the plain answer is that the Congress, whether intentionally or inadvertently, did not so provide, and the courts are without power to supply even the patent defects of legislation.

The early English case of *Jones v. Smart*, 1 Durnford and East, 44, involved an action of debt to recover a penalty for killing game, from one not qualified (under pertinent statutes) so to do. The statute in question prohibited the keeping of guns for the taking and killing of game by any person not being the owner of lands and tenements or certain estates of inheritance—exemption—"other than the son and heir apparent of an esquire, or other person of higher degree," &c., &c., and defendant claimed that as a doctor of physics under diploma from the University of St. Andrews in Scotland, he was "of higher degree" and therefore qualified, the contention resting upon the proposition that the phrase "or other person of higher degree" must be construed as in the nominative and not in the genitive case and sense, otherwise the absurdity of permitting the son and heir apparent, while prohibiting the father himself, would necessarily result.

The case was argued before Mansfield, Ch. J. and Willes, Ashhurst and Buller, JJ.

The judges took time to consider and in disposing of the case, rendering their opinion *seriatim*, Mansfield, Ch. J., said

(p. 48) "To be sure, absurd consequences may seem to follow from giving a privilege to the son, which the father has not; but the question is, has the statute done (given) it or not? * * *

"This court considered the point once before in the case of *The King v. Utley*; and there they held, that the statute meant *the sons* of other persons of higher degree. On full consideration I am not ripe to vary from the opinion given in that judgment;" * * *

Buller, J., voting with Mansfield, Ch. J. and Ashurst, J., disposed of the point thusly

(p. 52) "I have no doubt but that the legislature took it for granted that esquires themselves would be qualified in respect of their land; and, for the reasons assigned, extended the qualification to their eldest sons. So that had the legislature been asked at the time of making this act whether they intended to exclude the younger sons of dukes they would have answered, no. But I am as firmly persuaded that had the same question been put to them with respect to doctors, they would have answered in the affirmative. Be that as it may, we are bound to take the act of parliament, as they have made it: a *casus omissus* can in no case be supplied by a court of law, for that would be to make laws; nor can I conceive that it is our province to consider, whether such a law that has been passed be tyrannical or not." * * *

To the same effect is Sutherland on Statutory Construction, Section 431 (Ed. 1891) at page 557 and the numerous cases there cited.

See also:

Durousseau v. United States, 6 Cranch 307, 312-313;

Ex parte McCardle (7th Wallace), 74 U. S. 506, 513;

In Re Heath, 144 U. S. 92;

National Exchange Bank v. Peters, 144 U. S. 570;

Laurel Oil Co. v. Morrison, 212 U. S. 291, 296.

In *Dewey v. United States*, 178 U. S. 510, Mr. Justice Harlan, speaking for the Court said

“Our province is to declare what the law is, and not, under the guise of interpretation or under the influence of what may be surmised to be the policy of the Government, so to depart from sound rules of construction as in effect to adjudge that to be the law which Congress has not enacted as such. Here, the language used by Congress is unambiguous. It is so clear that the mind at once recognizes the intent of Congress. Interpreted according to the natural import of the words used, the statute involves no absurdity or contradiction, and there is consequently no room for construction. Our duty is to give effect to the will of Congress, as thus plainly expressed. *United States v. Fisher*, 2 Cranch, 358, 399; *Lake County v. Rollins*, 130 U. S. 662, 670.”

See also *Maxwell v. Maryland*, 40 Maryland, 273, a most interesting case, which declared because of certain legislative omissions, a taxing law of the State to be wholly inoperative. In an elaborate opinion citing many cases, including *Jones v. Smart*, *ubi supra*, Chief Judge Bartol, speaking for the court, said

(p. 292) "Here the words of the Act are, as we have said, plain and unambiguous; the Legislature has declared that in the execution of this assessment law, all the property in the State shall be exempt from taxation, except what is particularly mentioned. It is very probable; nay, we feel quite sure, the Legislature intended to say something very different. There has evidently been some mistake or omission, and we are asked to correct the mistake or supply what has been omitted, in order to make the Act express what we suppose to have been the intention of the Legislature. We certainly have no power or authority to do so." * * *

(p. 294.) "It is evident that a mistake has occurred in drawing the law—something has been omitted. But we cannot correct the mistake or supply the omissions—we are compelled to take the law as the Legislature has enacted it. We have no power to change the words or to add provisions in order to make it express what we may suppose to have been the intention of the Legislature.

"If they have failed to express their real

intentions, it is for them and not for the courts to amend the law, and make it express the legislative will."

To establish the existence of jurisdiction in the Court of Appeals and this Court to hear and determine the instant case, it is hardly sufficient to recite the fact that in the absence of protest or objection other similar cases have been adjudicated by the same and other tribunals, for *non constat*, had question been made in those earlier cases the appeals therein would have been entertained. In this connection see *Fritch, Incorporated, et al., vs. United States*, 248 U. S. 458, at p. 463, where Mr. Chief Justice White, speaking for the Court, in a case involving a somewhat analogous question respecting jurisdiction on part of the Circuit Courts of Appeals to review the action of District Courts of the United States when sitting as a court of claims, said:

"But it is true to say that in the case of *United States v. Buffalo Pitts Co.*, 234 U. S. 228, decided subsequent to the decision of the *Reid Case*, the jurisdiction of the Circuit Court of Appeals to review the action of a district court when sitting as a court of claims was recognized by entertaining and deciding appellate proceedings to review the action of the Circuit Court of Appeals in such case. It is to be observed, however, that in that case no question whatever was raised as to the jurisdiction, and in view of

the ruling in the *Reid Case*, to which no reference was made, the action of this court in the *Buffalo Pitts Case* must be regarded as a mere inadvertent assumption of jurisdiction rather than a decision that such jurisdiction existed.

* * * * *

“As it results that the contention of the United States as to the want of jurisdiction in the court below was well founded, the judgment of the Circuit Court of Appeals must be and it is

“Reversed and the cause remanded to that court with directions to dismiss for want of jurisdiction.”

To same effect see:

Baldwin Co. v. Howard Co., 256 U. S. 36,

where the court having been confronted with a somewhat similar question respecting jurisdiction assumed to exist as indicated by its action in a certain case of *Estate of Beckwith vs. Commissioner of Patents*, 252 U. S. 538, said:

(p. 40.) “It is true that in *Estate of Beckwith v. Commissioner of Patents*, 252 U. S. 538, this court allowed a writ of certiorari from a decision of the Court of Appeals of the District of Columbia, affirming a decision of the Commissioner of Patents, in an application to register a trade-mark. No question of the jurisdiction of the court was considered in that case, and an inad-

vertent allowance of the writ of certiorari does not establish the jurisdiction of the court." (Citing) *Fritch, Inc. v. United States*, 248 U. S. 458, 463."

It is therefore respectfully suggested that if the question of jurisdiction on part of the Court of Appeals of the District of Columbia to review the judgments of the Supreme Court of the District of Columbia, entered in cases brought before it under the provisions of Section 9 of the Trading with the Enemy Act which has been, for the first time perhaps, affirmatively raised in the instant cases both before the Court of Appeals and in this Court, be found upon examination to have been well raised the inadvertent assumption of jurisdiction by this and the lower appellate court in the earlier cases, wherein no question as to the existence of jurisdiction was raised, should not be permitted to obstruct the making of a more correct ruling on the point at this time.

II.

It is urged by appellants that the transcript of record contains no evidence tending to prove that there was, in fact, in the Treasury of the United States any money which at the time of seizure belonged to the Imperial German Government.

A pertinent answer to this contention would seem to be that both the Supreme Court and the Court of Appeals of the District of Columbia found and

decided otherwise. The Supreme Court of the District of Columbia found that the plaintiff herein had "duly established its debt as claimed and was entitled to be paid the sum of Five hundred thousand dollars (\$500,000), with interest at the rate of six per cent from the 14th day of July, 1919, *out of funds aggregating Two million seven hundred and fifteen thousand five hundred and seventy-one dollars (\$2,715,571), hereby decreed to be funds formerly belonging to said Imperial German Government heretofore seized by defendant, Thomas W. Miller, and held by Defendant Frank White, Treasurer of the United States, to the credit of accounts standing on the books of his office identified as Trust Account 555 and Trust Account 555-Special.*" (R. 431, p. 11.)

The Court of Appeals of the District of Columbia in its turn found and declared that the answer of the defendants Miller and White in case of Mechanics Securities Corporation (Case No. 423 here), which answer had been introduced in evidence as containing an admission against interest in the instant cause, had set forth "that the Custodian had turned over to the Treasurer \$515,571, which was deposited in Trust No. 555-Special 'Imperial German Government'; and that there had been transferred to the same Trust \$2,200,000 from Trust No. 9322 'Unknown Enemy No. 1,' making a total credit to Trust No. 555-Special, 'Imperial German Government' of \$2,715,571." The status of these respective trusts was also shown by true

copies of record entries from the Treasury Department, which were put in evidence."

"This was unquestionably competent evidence and sufficient in character to establish a *prima facie* case as to the existence of funds seized from the Imperial German Government, and held in the Treasury against which the claims of plaintiffs could be asserted. * * * The truth of these statements is not controverted. The only attempt made by defendants to rebut this testimony was to offer a copy of a letter dated March 14th, 1924 (See R. No. 425, p. 20) from the Alien Property Custodian to the Secretary of the Treasury attempting to withdraw" the earlier instructions directing the transfer of the \$2,200,000 to Trust No. 555-Special, Imperial German Government.

Considering the circumstances, said Court of Appeals declared that the transfer of the \$2,200,000 to Trust No. 555-Special, was a determination by the Custodian of the enemy ownership of the fund. "It amounted to a finding after investigation, that the fund should be held for, by, on account of or on behalf of or for the benefit of the Imperial German Government. There was no change of the ownership by the Custodian when the fund was transferred on March 8th, 1923, since there is nothing in the record to indicate that the ownership, up to that date, had been specifically determined. * * * It was not within the power of the Custodian to defeat the present actions, during their pendency in the Court below, by his attempted

transfer of the fund back to 'Unknown enemy Trust No. 9322.' "

At no time, either by pleadings or in the course of adducing proofs, did the defendants or either of them attempt to impeach their own admissions previously made and by plaintiffs introduced in evidence against them. Nor have they or either of them at any time, even up till now, asserted that in fact and in truth the moneys seized by the Alien Property Custodian and deposited in the Treasury of the United States were the property of any other than the Imperial German Government as found and decreed by both of the Courts below.

Rather than to make that full, frank and perfect disclosure which the statute evidently contemplates on the part of its administrative officers charged with the duties of sequestering and preserving enemy property, these defendants have preferred to mask their own superior knowledge with silence and to obstruct the Courts in their endeavors to administer the law as written by demanding "strict proof" from plaintiffs less fully informed than they themselves presumably must be.

In such circumstances, plaintiffs have met the burden as best they could and to the entire satisfaction of the trial and intermediate appellate courts, which have concurred in their findings respecting the facts and in their decree as to where the right of the matter lies.

In such circumstances, and in the absence of a single scintilla of evidence to the contrary, what

true ground is or was there for contending, either here or in the court below, that the moneys in question were other than the former property of the sometime Imperial German Government?

For purposes of seizure the determination of the Alien Property Custodian, after investigation, was final, in the absence of suit brought under Section 9 for its return, and that whether "right or wrong."

Central Trust Co. *v.* Garvan, 254 U. S. 554, 567, 568.

Stoeck *v.* Wallace, 255 U. S. 239, 244, 245.

Commercial Trust Co. *v.* Miller, 262 U. S. 51, 56.

"Therefore the authority committed to the Alien Property Custodian by the executive orders of October 12, 1917 and February 26, 1918, to determine, after investigation, whether property was subject to surrender or seizure under the Act, is ample. *Stoeck v. Wallace*, 255 U. S. 239, 244. For the purposes the decision of the Custodian is final."

Sigg-Fehr v. White, 285 Federal 949, 953.

If such decision be final for purposes of the seizure and sequestration, why does it not remain final, acting as an estoppel against the Alien Custodian when relied upon by a debtor of the detected and mulcted enemy, seeking, under express provisions

of Section 9, to establish his debt against such enemy, and to secure its satisfaction out of the sequestered property.

Here there is no assertion by the Alien Property Custodian of mistake on his part in making his determination and the seizure. No claimant has sought or is seeking to combat the seizure or to compel restoration of the moneys seized.

The attempt on part of the Alien Property Custodian to compel the debtor claimant to assume the rôle and duties which the statute and the executive orders impose upon the former is unwarranted by the statute under which both the Custodian and the claimant plaintiff is acting, and is opposed to well-settled principles of judicial practice.

Considering the subject of a claim of debt within the meaning of Section 9 of the Trading with the Enemy Act, the Supreme Court of the United States, speaking by Mr. Justice Butler, recently said (*Miller, A. P. C., v. Robertson*, 266 U. S. 243):

“This section gives to ‘any person, not an enemy, or ally of enemy * * * to whom any debt may be owing from an enemy, or ally of enemy’ the right ‘to institute a suit in equity in the district court * * * (to which suit the Alien Property Custodian or the Treasurer of the United States, as the case may be, shall be made a party defendant), to establish the * * * debt so claimed. * * *’

“At the time of the passage of the act, a large amount of property was owned and

much business was carried on by alien enemies and their allies in this country. Congress determined that their property should be taken over and that trade with them should cease. The purpose was to weaken enemy countries by depriving their supporters of power to give aid. But the seizure of the money and property of enemies and their allies would tend to hinder and might embarrass or ruin those having business transactions with them. By the taking, the property seized would be put out of reach of persons claiming it and beyond the power of creditors to attach it for debt. The purpose of section 9 was to prevent or lessen losses and inconvenience liable to result to non-enemy persons. This provision is highly remedial and should be liberally construed to effect the purposes of Congress and to give remedy in all cases intended to be covered. *United States v. Anderson*, 9 Wall., 56, 65, 66; *United States v. Padelford*, 9 Wall., 531, 538. The just purpose of the section is not to be defeated by a narrow interpretation or by unnecessarily restricting the meaning of the word within technical limitations. *United States v. Freeman*, 3 How., 556, 565; *Danciger v. Cooley*, 248 U. S., 319, 326; *French v. Weeks*, 259 U. S., 326, 328.

“Appellants contend that ‘debt,’ as used in section 9, is limited to its common-law meaning. Undoubtedly, Congress intended to include causes of action which at common law were enforceable in an action of debt, such as those arising on bonds, notes, and

other express promises to pay (*Raborg v. Peyton*, 2 Wheat., 385; *United States v. Colt*, 25 Fed. Cas., No. 14,839, p. 581) *quantum meruit* and *quantum valebat*. *Smith v. First Congregational Meeting House*, 8 Pick., 177, 181; *Norris v. School District*, 12 Me., 293, 297; *Jenkins v. Richardson*, 6 J. J. Marshall (Ky.), 441; *Mahaffey v. Petty*, 1 Ga., 261, 264. * * *

"There is nothing in the language of the act or the reasons for its enactment to indicate a purpose to restrict the right to institute suits in equity as authorized in Section 9 to causes of action cognizable in debt under technical procedural rules. The words of a statute are to be read in their natural and ordinary sense, giving them a meaning to their full extent and capacity, unless some strong reason to the contrary appears. *Birks, App., Allison, Resp.*, 13 C. B. (N. S.) 12, 23; *Minor v. Mechanics Bank*, 1 Pet. 46, 64; *De Ganay v. Lederer*, 250 U. S. 376, 381.

"We think it immaterial whether plaintiff's cause of action is one for which an action of debt might be maintained. It would be unreasonable and contrary to the intention of Congress to exclude claims like that here in question, and we hold them to be included."

We submit that the suits now before this Court were properly conceived, appropriately and timely brought, and that as found by the two lower Courts the proofs tendered by plaintiffs in support of their respective claims was both relevant and

material to the issues raised and sufficient, certainly, in the silence of the defendants, one of whom (Miller, then Alien Property Custodian) was present in court throughout its submission to warrant the decree of which his successor (Hicks) now here complains.

The so-called "two court rule" has become too firmly established in the practice of this Court to warrant more than its mere citation. Upon the record before this Court and the concurring decisions of the two lower courts, the possibility of demonstrating the presence of such clear error as to compel withdrawal of the protecting influence of the rule would seem at best but slight if not in fact non-existent.

III.

The contentions on part of the appellants that either the German Government or the United States or perhaps both either should have been made parties to the cause, or that at least the United States not applying to intervene, should nevertheless be permitted to assert, without submission to the ordinary processes and procedure, supposed rights to a share in the funds by means of an informal suggestion would seem to call for but scant consideration and but little if any reply.

At the outset it would seem to be strange that an able Attorney General should be either expected or empowered to assert rights on part of the United States in properties sequestered under the terms

and in conformity with the provisions of a Federal statute, contrary to the dispensatory terms of the statute itself.

Section 9, as originally enacted, apparently did contemplate intervention of the enemy owner of property in cases of executive action on a creditor's application to have his debt satisfied out of a debtor's property conveyed, delivered or paid to the Alien Property Custodian, for it was therein provided that in event of application made to him, "the President, *with the assent of the owner of said property* and of all persons claiming any right, title or interest therein," might order payment out of such funds so held by the Alien Property Custodian. But the unworkable character of such provisional requirement was quickly recognized, and it was dropped from the Act by the amendatory statute of July 11, 1919, 41 Stats. 35.

Neither originally nor since has section 9 contained any provision for joining the enemy debtor as a party defendant in any suit brought to establish any interest or claim in or to an enemy debtor's property which had been seized by the Alien Property Custodian.

The point has already received judicial consideration and has been quite convincingly determined.

Spiegelberg v. Garvan, 260 Fed. 302.

The *ratio decidendi* of District Judge Mayer is both interesting and convincing. We could add but little to it if we would. We think nothing further

could be required to carry conviction to the open mind, but, by way of passing comment, and as perhaps adding strength where none is needed, we invite attention to the fact that Judge Mayer's opinion was delivered and filed on July 10, 1919; that therein he commented upon the requirement as to enemy assets *inter alios* of the owner of the property, in cases of executive application, while omitting any such provision "in the event of the institution of an equity suit," suggesting by way of explanation of such difference that the legislation "may have contemplated the possibility during the war, on the one hand, of communication with the enemy in the discretion of the President through intermediate diplomatic channels; and, on the other hand, alien enemies under section 2 of the Act * * * might be in the United States, and might for one reason or another wish to give assent," but, said he (p. 304), "it will be noted that there is no provision as to assent of the owner in the event of the institution of an equity suit" * * * and "It is significant, however, that section 9 does not contain any provision requiring that the alien enemy should be made a party defendant. *If Congress had so intended, the insertion of the necessary language would have been simple.*"

But it is even more significant that on the very next day after the delivery of Judge Mayer's opinion, that is, on July 11, 1919, *ubi supra*, the Congress amended the Act itself by dropping out the requirement for consent by the alien owner in

the cases of application made to the President, and reenacting the provisions as to the necessary and proper parties in connection with the equity suits precisely as theretofore.

See also *Koscinski v. White, Treasurer*, 286 Fed. 211, 216.

This point is further and most enlighteningly discussed in

Munich Reissuance Company v. First Reissuance Co., 300 Federal (No. 2) 345, 348;

where it is held (Thomas, D. J.) that the seizure by the Alien Property Custodian of alien enemy property completely divested the enemy owner "of all title and interest therein. The subsequent disposition of the property or its proceeds is a matter with which he has no concern, and he cannot maintain an action in court to recover any such property or its proceeds from a citizen of the United States to whom it has been transferred or paid, whether rightfully or erroneously." (Opinion delivered June 2, 1924.)

Upon the strength of the arguments of learned judges made in these cited cases, we rest our contentions that in the instant case the Imperial German Government is neither a necessary nor even a proper party, nor is the absence of consent on its part to submit to suit in this court of the slightest moment.

**As to the Suggestion of the United States That It Should
be Permitted to Share Pro Rata With Its Citizen
Claimants.**

To deal with this suggestion seriously and respectfully presents much of difficulty. If the United States had thought to subject moneys and properties of the German enemy to the satisfaction of its claims for expenses incurred in the prosecution of the war, why go through the mummerly of submitting itself and its claims in such regard to its domestic judicial tribunals? By the exercise of its sovereign might it had provided for the seizure of alien properties. If so intended, why did it not, without more, retain it? Why enact a statute under the terms of which, if at all applicable to the United States as a creditor, would require the sovereign to assume the rôle of a suppliant claimant, and on oath make representation to its worthy Alien Property Custodian that at no time had it ever been enemy or ally of enemy to itself. The contention reaches to the top heights of forensic and dialectic absurdity. The supposed rights of the United States do not constitute "debt" in any sense known to our jurisprudence. The rights as well as the operations and intercourse of war differ widely from those of peace, and a differing nomenclature marks the relations between States in antagonism and those in commercial intercourse. The asserted claim put forth in the so-called "Suggestion" is but the demand of the victor for dam-

ages and compensation—reparation, so called. Such claims and such demands, until acceded to and promised to be met by the vanquished, are but assertions of damage and demands for the repairment thereof. Until so conceded and promised to be paid, they possess none of the attributes of "debt" as known in American juridical circles. Debt does not include any claim for damages suffered, which of necessity implies tort as opposed to express promise or contract. It contemplates agreement, and does not result from the breaching of the peace. Reparation is the redress of grievances, the making of amends for wrongs suffered; compensation for injuries willfully inflicted. "Debt" implies a fixed and certain sum, while reparation may be what the victor wills and the vanquished must.

The "Trading with the Enemy Act" exposes no plan or scheme for the wringing of reparations from Germany by the United States. That has been dealt with partially by treaties and is still the subject of conversational exchanges between the two nations.

The Act does not purport to deal with reparations in any shape or manner. If it purported to do so, it would constitute not only unique but senseless legislation, and if by judicial construction it should be so extended, it would operate, so far as individual, partnership, association, company and unincorporated bodies of individual claimants are concerned, but to break the promise which it pur-

ports to make for the so-called war "debt" far exceeds all sequestrations.

It is respectfully submitted that the appeal in case No. 430 should be dismissed for want of jurisdiction to entertain it, and that the appeal in case No. 431 either should be reversed and remanded to the Court of Appeals of the District of Columbia with an instruction to dismiss the appeal to it from the Supreme Court of the District of Columbia, or that the decree of the Court of Appeals of the District of Columbia affirming the final decree of the Supreme Court of the District of Columbia should be affirmed.

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